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SOLICITATION, OFFER AND AWARD		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) ►		RATING		PAGE OF 1 79 PAGES	
2. CONTRACT NO.		3. SOLICITATION NO. DE-RP26-04NT42110		4. TYPE OF SOLICITATION SEALED BID (IFB) X NEGOTIATED (RFP)		5. DATE ISSUED 7/23/2004	
6. REQUISITION/PURCHASE NO. 04-NT42110		7. ISSUED BY U.S. Department of Energy, National Energy Technology Laboratory P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507-0880		CODE		8. ADDRESS OFFER TO (If other than Item 7)	

NOTE: In sealed bid solicitations, "offer" and "offeror" mean "bid" and "bidder."

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in IIPS electronic until 8:00pm local time 8/24/2004.
(Hour) (Date)

CAUTION — LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL: ►		A. NAME Donald E. Hafer Jr.		B. TELEPHONE NO. (NO COLLECT CALLS) AREA CODE 304 NUMBER 285-1361 EXT.		C. E-MAIL ADDRESS Donald.hafer@netl.doe.gov	
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OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 180 calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8) ►		10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %
14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:		AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR		CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)	
15B. TELEPHONE NUMBER		15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE — ENTER SUCH ADDRESS IN SCHEDULE		17. SIGNATURE	
AREA CODE	NUMBER	EXT.		18. OFFER DATE	

AWARD (To be completed by Government)

19. ACCEPTED AS TO ITEMS NUMBERED		20. AMOUNT		21. ACCOUNTING AND APPROPRIATION	
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) ()				23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified) ►	
24. ADMINISTERED BY (If other than Item 7)		CODE		25. PAYMENT WILL BE MADE BY	
26. NAME OF CONTRACTING OFFICER (Type or print)				27. UNITED STATES OF AMERICA (Signature of Contracting Officer)	
				28. AWARD DATE	

IMPORTANT — Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 ITEMS BEING ACQUIRED (BASE CONTRACT WITH OPTIONS) (MAR 1999)

The Contractor shall furnish all personnel, supervision, equipment, and services (except as may be expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, the performance of the statement of work.

Note: Items 1 through 3 are Firm Fixed Price line items. All items are indefinite quantity items with guaranteed minimum quantities listed and an estimated maximum listed for each item.

Article B.3, Limitation of Government's Obligation applies to all items (1 through 3).

ITEM DESCRIPTION

Item 1 – Fly ash guaranteed minimum 16 samples maximum 250 samples - Each sample requires triplicate testing/analyses. Unit Price proposed shall be inclusive of the triplicate test/analyses for each sample.	\$ _____ per (triplicate) volatilization test
	\$ _____ per (triplicate) microbial test
	\$ _____ per (triplicate) leaching test
	\$ _____ per (triplicate) total analyses

Item 2 - FGD/SDA guaranteed minimum 10 samples maximum 100 samples - Each sample requires triplicate testing/analyses. Unit Price proposed shall be inclusive of the triplicate test/analyses for each sample.	\$ _____ per (triplicate) volatilization test
	\$ _____ per (triplicate) microbial test
	\$ _____ per (triplicate) leaching test
	\$ _____ per (triplicate) total analyses

Item 3 - FGD Water guaranteed minimum 4 samples maximum 60 samples - Each sample requires triplicate testing/analyses. Unit Price proposed shall be inclusive of the triplicate test/analyses for each sample.	\$ _____ per (triplicate) volatilization test
	\$ _____ per (triplicate) total analyses

Item 4 –Limited Halide guaranteed minimum 4 samples maximum 60 samples - Each sample requires triplicate testing/analyses. Unit Price proposed shall be inclusive of the triplicate test/analyses for each sample.	\$ _____ per (triplicate) volatilization test
	\$ _____ per (triplicate) leaching test
	\$ _____ per (triplicate) total analyses

Item 5 - Reports as prescribed in accordance with Part III, Section J, Attachment b, "Reporting Requirements Checklist". (Not separately priced).	(Not separately priced)
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B.2 CEILING PRICE OF CONTRACT (JUL 1991)

The ceiling price of this contract is \$ **TBD**. All orders count against this ceiling.

B.3 LIMITATION OF GOVERNMENT'S OBLIGATION

(a) Contract line item(s) 1 through 4 are incrementally funded. For these item(s), the sum of \$ **TBD** of the total price is presently available for payment and allotted to this contract.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor will not be obligated to continue work on those item(s) beyond that point. The Government will not be obligated in

any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government." As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) The Contractor will notify the Contracting Officer in writing at least sixty (60) days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination of convenience, will approximate seventy-five (75) percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue timely performance of applicable line items. If after such notification, additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "termination for Convenience of the Government."

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regards to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for the Convenience of the Government."

SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 STATEMENT OF WORK (NOV 1997)

The Statement of Work is located in Part III -- Section J, Attachment A to this contract.

C.2 REPORTS (MAY 1998)

Reports shall be prepared and submitted in accordance with the reporting requirements described in Part III -- Section J, Attachment B.

SECTION D - PACKAGING AND MARKING**D.1 PACKAGING (FEB 1999)**

Preservation, packaging, and packing for shipment or mailing of all work delivered hereunder shall be in accordance with good commercial practice and adequate to insure acceptance by common carrier and safe transportation at the most economical rate(s).

Except for those reports required by the Reporting Requirements Checklist of the contract, which are coded by A (As required) where the urgency of receipt of the report by the Government necessitates the use of the most expeditious method of delivery, reports deliverable under this contract shall be mailed by other than first-class mail, unless the urgency of the deliverable sufficiently justifies the use of first-class mail. The Contractor shall not utilize certified or registered mail or private parcel delivery service for the distribution of reports under this contract without the advance approval of the Contracting Officer except for those reports coded A.

D.2 MARKING (JAN 1999)

Each package, report or other deliverable shall be accompanied by a letter or other document which:

- (1) Identifies the contract by number under which the item is being delivered.
- (2) Identifies the deliverable Item Number or Report Requirement which requires the delivered item(s).
- (3) Indicates whether the Contractor considers the delivered item to be a partial or full satisfaction of the requirement.

For any package, report, or other deliverable being delivered to a party other than the Contracting Officer, a copy of the document shall be simultaneously provided to the office administering the contract, as identified in Section G of the contract, or if none, to the Contracting Officer.

SECTION E - INSPECTION AND ACCEPTANCE**E.1 INSPECTION (NOV 1997)**

Inspection of all items under this contract shall be accomplished by the DOE Contracting Officer's Representative (COR), or any other duly authorized Government representative.

E.2 ACCEPTANCE (MAR 1999)

Final acceptance of all work and effort under this contract (including "Reporting Requirements," if any) shall be accomplished by the Contracting Officer or designee.

E.3 52.246-4 INSPECTION OF SERVICES - FIXED-PRICE. (AUG 1996)

(a) *Definition:* "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may -

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may -

(1) By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service; or

(2) Terminate the contract for default.

SECTION F - DELIVERIES OR PERFORMANCE

F.1 PERIOD OF PERFORMANCE

BASE CONTRACT

The work to be performed under the Base Contract (Reference Part I, Section, B) shall commence on the effective date of the contract and continue for 24 months.

F.2 PRINCIPAL PLACE OF PERFORMANCE (FEB 1998)

The principal place of performance under this contract shall be at the Contractor's facilities located at **TBD**.

F.3 52.242-15 STOP-WORK ORDER. (AUG 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either -

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if -

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

F.4 52.242-17 GOVERNMENT DELAY OF WORK. (APR 1984)

(a) If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the Contracting Officer in the administration of this contract that is not expressly or impliedly authorized by this contract, or (2) by a failure of the Contracting Officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause,

including the fault or negligence of the Contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(b) A claim under this clause shall not be allowed –

(1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

SECTION G - CONTRACT ADMINISTRATION DATA

G.1 CORRESPONDENCE PROCEDURES (FEB 2000)

To promote timely and effective administration, correspondence (except for invoices and reports) submitted under this contract shall be subject to the following procedures:

(a) Technical Correspondence

Technical correspondence (as used herein, this term excludes technical correspondence where patent or technical data issues are involved and correspondence which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms, or conditions, of this contract) shall be addressed to the DOE Contracting Officer's Representative, with an information copy of the correspondence to the DOE Contract Specialist.

(b) Property Correspondence

Property correspondence (as used herein, this term includes correspondence which addresses matters which relate to property issues which come under the contract's Government property provisions) shall be addressed to the DOE Property Administrator, with information copies of the correspondence to the DOE Contracting Officer's Representative and the DOE Contract Specialist.

(c) Correspondence on Patent or Technical Data Issues

Correspondence concerning patent or technical data issues shall be addressed to the Office of Intellectual Property Law, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Building 201, Argonne, IL 60439.

Information copies of correspondence being sent to the Intellectual Property Law Division shall also be sent to the NETL Patent Attorney, the DOE Contract Specialist, and the Contracting Officer's Representative.

(d) Other Correspondence

All other correspondence shall be addressed to the DOE Contract Specialist with information copies of the correspondence to the DOE Contracting Officer's Representative.

(e) Subject Line(s)

All correspondence shall contain a subject line commencing with the contract number, i.e., DE-AT26-03NT41741, and identifying the specific contract action requested.

G.2 SUBMISSION OF VOUCHERS/INVOICES

(a) Voucher Form (SF 1034)

In requesting reimbursement, contractors shall use Standard Form 1034 (Public Voucher for Purchases and Services Other Than Personal). An electronic version of the SF1034 can be found on the NETL website at <http://www.netl.doe.gov/business/forms/forms.html>. Acceptable substitutes for the forms (which provide the same necessary information) may be used.

In accordance with FAR 52.232-25, "Prompt Payment," all invoices shall include the following information:

- (1) Name and address of contractor/vendor
- (2) Invoice date
- (3) Contract number or other authorization for delivery of property or service
- (4) Description, price and quantity of property and services actually delivered or rendered
- (5) Shipping and payment terms

(6) Name (where practicable), title, phone number and complete mailing address of responsible official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment)

(7) Name (where practicable), title, phone number and complete mailing address of the person to be notified in the event of a defective invoice.

(8) Other substantiating documentation or information as required by the contract.

(b) Submission of Voucher

Submit one copy of the original voucher including any Supporting Documentation to the following payment office:

U. S. Department of Energy
Oak Ridge Financial Services Center
P. O. Box 4787
200 Administration Road
Oak Ridge, TN 37831

In addition, submit two copies of the voucher including Supporting Documentation to the following address:

U. S. Department of Energy
National Energy Technology Laboratory
ATTN: Accounts Payable
3610 Collins Ferry Road
P.O. Box 880
Morgantown, WV 26507-0880

(c) Billing Period

Vouchers shall be submitted no more frequently than monthly (unless prior written consent of the Contracting Officer for more frequent billing is obtained). The period of performance covered by vouchers should be the same as covered by any required monthly technical progress reports. The fixed price items shall be billed monthly in arrears and indicate the monthly billing period that services were rendered.

(d) Payment Method

In accordance with Mandatory Information for Electronic Funds Transfer Payment, payment under this contract will be made utilizing the Automated Clearing House (ACH) network. The payment system is specifically referred to as "Vendor Express."

(e) Defective Invoices

Invoices that are determined to be defective, and therefore not suitable for payment, shall be returned to the Contractor as soon as practicable, specifying the reason(s) why the invoice is not proper.

(f) Status of Payments

The Oak Ridge Financial Service Center (ORFSC) has a system via Internet, in which contractors can request information about payments by invoice, by contract number, and/or by paid date. The system is called Vendor Inquiry Payment Electronic Reporting System (VIPERS) and is available to contractors at the following website: <http://finweb.oro.doe.gov/vipers.htm>. Contractors must have a federal tax identification number (TIN) and then obtain a personal identification number (PIN) to access the system.

G.3 NOTICE OF INVOICE PROCESSING BY SUPPORT CONTRACTOR (DEC 1999)

A support service contractor performs the function of processing of all invoices submitted to the National Energy Technology Laboratory, against its awards. Therefore, this contractor has access to your business confidential

cost/rate information. A special provision in this contractor's award requires the confidential treatment by all contractor employees of any and all business confidential information of other contractors and financial assistance recipients to which they have access.

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 CONSECUTIVE NUMBERING (JAN 1999)

Due to automated procedures employed in formulating this document, clauses and provisions contained within it may not always be consecutively numbered.

H.2 TECHNICAL DIRECTION (JUNE 1998)

(a) Performance of the work under this contract shall be subject to the technical direction of the Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:

(1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, required pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.

(2) Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.

(3) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.

(b) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which:

(1) Constitutes an assignment of additional work outside the Statement of Work;

(2) Constitutes a change as defined in the contract clause entitled "Changes";

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions or specifications of the contract; or

(5) Interferes with the Contractor's right to perform the terms and conditions of the contract.

(c) All technical directions shall be issued in writing by the COR.

(d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed by this clause and within the authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (b)(1) through (5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer shall:

(1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the "Changes" clause of the contract; or

(2) Advise the Contractor within a reasonable time that the Government will issue a written change order.

(e) A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled "Disputes - Alternate I".

H.3 MODIFICATION AUTHORITY (NOV 1997)

Notwithstanding any of the other provisions of this contract, the Contracting Officer shall be the only individual authorized to:

- (a) accept nonconforming work,
- (b) waive any requirement of this contract, or
- (c) modify any term or condition of this contract.

H.7 KEY PERSONNEL/PROGRAM MANAGER (MAR 1998)

The key personnel, which includes the Program Manager, specified below, are considered to be essential to the work being performed under this award; moreover, any changes to these personnel require prior DOE Contracting Officer's written approval.

The Program Manager shall serve as the Contractor's authorized supervisor for technical and administrative performance of all work hereunder. The Program Manager shall receive and execute, on behalf of the Contractor, such technical directions as the DOE Contracting Officer's Representative may issue within the terms and conditions of the contract.

The following is a list of key personnel that have been approved for this contract:

Name

Title

[TBD]

[TBD]

Prior to diverting any of the specified individuals, the Contractor shall notify the Contracting Officer not less than thirty (30) calendar days prior to the diversion or substitution of key personnel and shall submit a written justification (including qualifications of proposed substitutions) to permit evaluation. The proposed changes will be approved in writing at the sole discretion of the Contracting Officer, with concurrence of the Contracting Officer's Representative.

H.8 PRIOR APPROVAL REQUIREMENTS FOR PLACEMENT OF SUBCONTRACTS/CONSULTANTS (OCT 1998)

The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract, including consultants, for which advance notification is required under FAR 52.244-2, "Subcontracts".

Any request for subcontract/consultant approval shall include the elements prescribed by FAR 52.244-2, including subcontractor/consultant Representations and Certifications. For consultants the Contractor will obtain and furnish information supporting the need for and selection of such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultants to others for performing consulting services of a similar nature.

Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts and/or consultants shall not be construed to constitute approval of the subcontractor or any subcontract terms or conditions, determination of the allowability of any cost, revision of this contract or any of the respective obligations of the parties thereunder, or creation of any subcontractor privity of contract with the Government.

The Contractor is hereby given consent to the placement of the following subcontractors, which were evaluated during negotiations:

[TBD]

Notwithstanding this consent, the Contractor shall ensure compliance with FAR 52.244-2. Also, since these subcontracts and/or consultants have as a purpose the conduct of research, development and demonstration work, they must additionally contain all applicable flow-down clauses contained in Part II, Section I.

H.9 CONFIDENTIALITY OF INFORMATION (MAY 1998)

To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agree not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

- (a) Information which, at the time of receipt by the Contractor, is in the public domain;
- (b) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
- (c) Information which the Contractor can demonstrate was in his possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
- (d) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.

The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.

The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer. From time to time upon request of the Contracting Officer, the Contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.

The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.

This clause shall flow down to all subcontracts.

H.11 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES (MAY 2001)

The contractor shall cooperate fully with all other on-site DOE contractors (including, but not limited to, support service, architect and engineering, janitorial, computer operation contractors, or consultants) and Government employees, and carefully fit its own work to such other work as may be directed by the Contracting Officer or the Principal Contracting Officers Representative. The contractor shall not commit, or permit, any act which will interfere with the performance of work by any other contractor or by Government employees.

H.12 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR (JUNE 1998)

The Representations, Certifications and Other Statements of the Offeror for this contract are hereby incorporated by reference.

H.13 MINIMUM WAGE DETERMINATION AND FRINGE BENEFITS (NOV 1997)

In the performance of this contract the Contractor shall comply with the requirements of U.S. Department of Labor Wage Determination Number [TBD], dated [TBD]. A copy of this Wage Determination is attached to this contract (see Part III, Section J).

H.14 COMPLIANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL REQUIREMENTS (FEB 1998)

In performing work under this contract, the Contractor shall comply with all relevant federal, state, and local statutes, ordinances, laws, and regulations.

H.15 CONTRACTOR PRESS RELEASES (APR 1998)

The DOE policy and procedure on news releases requires that all Contractor press releases be reviewed and approved by DOE prior to issuance. Therefore, the Contractor shall, at least ten (10) days prior to the planned issue date, submit a draft copy to the Contracting Officer of any planned press releases related to work performed under this contract. The Contracting Officer will then obtain necessary reviews and clearances and provide the Contractor with the results of such reviews prior to the planned issue date.

H.16 PERMITS AND LICENSES (JAN 1999)

Within sixty (60) days of award, the Contractor shall submit to the DOE Contracting Officer Representative (COR) a list of ES&H approvals that, in the Contractor's opinion, shall be required to complete the work under this award. This list shall include the topic of the approval being sought, the approving authority, and the expected submit/approval schedule. The COR shall be notified as specific items are added or removed from the list and processed through their approval cycles.

The Contractor agrees to include this clause in their first-tier subcontracts and agrees to enforce the terms of this clause.

H.17 SAFETY & HEALTH AND ENVIRONMENTAL PROTECTION (JUNE 1998)

- (a) The Contractor shall implement the DOE work in accordance with all applicable Federal, State and local laws, including codes, ordinances and regulations, covering safety, health and environmental protection.
- (b) The Contractor agrees to include paragraph (a) of this clause in first-tier subcontracts and agrees to enforce the terms of this clause.

H.18 LOBBYING RESTRICTION (ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2002) (JAN 2002)

The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

A copy of the DOE "Lobbying Brochure" which provides a summary of the statutory and regulatory restrictions regarding lobbying activities for Federal contractors can be found at

<http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Lobbying+Brochure?OpenDocument>

H.19 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS (JAN 2002)

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-Made.

H.20 INSURANCE – MINIMUM REQUIREMENTS

The contractor shall provide and maintain workers' compensation, employer's liability and comprehensive general liability (bodily injury), and such other insurance as the Contracting Officer may require under this contract.

Minimum requirements are as follows:

Worker's Compensation and Employer's Liability

Contractors are required to comply with applicable Federal and State worker's compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 shall be required.

General Liability

Comprehensive General Liability Other than Automobile: Bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per person and \$1,000,000 per occurrence. Property damage of \$500,000 per accident and \$1,000,000 aggregate.

H.21 INDEMNITY – ENVIRONMENTAL, HEALTH AND SAFETY VIOLATIONS

Should the contractor, in the performance of work under this contract, fail to comply with the requirements of environmental permits, local laws or regulations, Federal and State laws or regulations, the Statement of Work and its Attachments, or a Task Order and cause any environmental, health or safety liability to be assessed against the Government, the contractor agrees to indemnify the Government for this liability. This requirement shall be placed in all subcontracts awarded by the contractor under this contract. The provisions of this clause are limited to liabilities not otherwise addressed by other provisions of this contract.

H.22 ORDERING PROCEDURE (DEC 2000)

Performance under this contract shall be subject to the following ordering procedure:

The Contractor shall incur costs under this contract only in the performance of Task Orders and revisions to Task Orders issued in accordance with this ordering procedure. No other costs are authorized without the express written consent of the Contracting Officer (CO).

From time to time during the period of performance of this contract, Task Orders will be issued in writing by the Contracting Officer designating (1) the task to be performed; (2) the schedule of performance; and (3) any special instructions. Such Task Orders will specify deliverables and required delivery dates. Deliverables may consist of statements, charts, reports, briefing notes, tabulations, view graphs, and other forms of presentation as appropriate.

Task Orders will be issued on forms specified and provided by the Government. Task Orders will be numbered. A modification to the Task Orders will be identified by an alpha designation following the existing Task Order number indicating the revision sequence.

This ordering procedure is of a lesser order of precedence than the "Limitation of Government's Obligation," "Ceiling Price of Contract," "Completion Dates," or "Term of Contract," clauses of the contract. The Contractor is not authorized to incur costs on Task Orders which are not in compliance with any of those clauses of the contract.

SECTION I - CONTRACT CLAUSES

I.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE. (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

Federal Acquisition Regulations (Clauses starting with 52): <http://www.arnet.gov/far/index.html>

Department of Energy Regulations (Clauses starting with 952): <http://www.professionals.doe.gov>

I.2 52.203-3 GRATUITIES. APR 1984)

I.3 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT. JUL 1995

I.4 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY. JAN 1997

I.5 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY. JAN 1997

I.6 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. JUN 1997

I.7 52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER. AUG 2000

I.8 952.208-70 PRINTING. APR 1984

I.9 52.215-2 AUDIT AND RECORDS - NEGOTIATION. JUN 1999

I.10 52.215-18 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS. OCT 1997

I.11 52.216-18 ORDERING. OCT 1995

I.12 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS. OCT 2000

I.13 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN. (JAN 2002)

I.14 52.219-16 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN. (JAN 1999)

I.15 52.222-3 CONVICT LABOR. AUG 1996

I.16 52.222-21 PROHIBITION OF SEGREGATED FACILITIES. FEB 1999

I.17 52.222-26 EQUAL OPPORTUNITY. APR 2002

I.18 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS. DEC 2001

I.19 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES. JUN 1998

I.20 52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION. APR 1998

I.21 52.223-6 DRUG-FREE WORKPLACE. MAY 2001

I.22 52.223-10 WASTE REDUCTION PROGRAM. AUG 2000

I.23 52.223-14 TOXIC CHEMICAL RELEASE REPORTING. OCT 2000

I.24 52.224-1 PRIVACY ACT NOTIFICATION. APR 1984

I.25 52.224-2 PRIVACY ACT. APR 1984

I.26 952.224-70 PAPERWORK REDUCTION ACT. APR 1984

I.27 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES. JUL 2000

I.28 52.227-3 PATENT INDEMNITY. (APR 1984)

I.29 52.227-6 ROYALTY INFORMATION. (APR 1984)

I.30 952.227-11 PATENT RIGHTS-RETENTION BY THE CONTRACTOR (SHORT FORM). (FEB 1995)

I.31 952.227-13 PATENT RIGHTS-ACQUISITION BY THE GOVERNMENT. (SEP 1997)

I.32 52.227-14 RIGHTS IN DATA - GENERAL. (JUN 1987) WITH ALTERNATE V (JUN 1987) AS AMENDED BY DEAR 927.409 JAN 1999

I.33 52.227-16 ADDITIONAL DATA REQUIREMENTS. (JUN 1987)

I.34 52.227-17 RIGHTS IN DATA - SPECIAL WORKS. (JUN 1987)

I.35 52.228-7 INSURANCE - LIABILITY TO THIRD PERSONS MAR 1996

I.36 52.229-3 FEDERAL, STATE, AND LOCAL TAXES. JAN 1991

I.37 52.232-1 PAYMENTS. APR 1984

I.38 52.232-8 DISCOUNTS FOR PROMPT PAYMENT. FEB 2002

I.39 52.232-11 EXTRAS. APR 1984

- I.40 52.232-17 INTEREST. JUN 1996**
- I.41 52.232-23 ASSIGNMENT OF CLAIMS. JAN 1986**
- I.42 52.232-25 PROMPT PAYMENT. FEB 2002**
- I.43 52.242-13 BANKRUPTCY. JUL 1995**
- I.44 52.244-2 SUBCONTRACTS AUG 1998**
- I.45 52.244-5 COMPETITION IN SUBCONTRACTING. (DEC 1996)**
- I.46 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS. MAY 2002**
- I.47 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS). DEC 1989**
- I.48 952.245-2 GOVERNMENT PROPERTY FIXED-PRICE CONTRACTS**
- I.49 52.245-4 GOVERNMENT-FURNISHED PROPERTY (SHORT FORM). APR 1984**
- I.50 952.247-70 FOREIGN TRAVEL MARCH 2000**
- I.51 52.249-1 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM). APR 1984**
- I.52 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE). APR 1984**
- I.53 52.251-1 GOVERNMENT SUPPLY SOURCES. APR 1984**
- I.54 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES. JAN 1991**
- I.55 52.253-1 COMPUTER GENERATED FORMS. JAN 1991**

I.56 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES. (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the clause.

(b) The use in this solicitation or contract of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

I.57 52.202-1 DEFINITIONS. (DEC 2001)

As prescribed in section 2.201, insert the following clause:

DEFINITIONS (DEC 2001)

-

(a) “Agency head” or “head of the agency” means the Secretary (Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, unless otherwise indicated, including any deputy or assistant chief official of the executive agency.

(b) “Commercial component” means any component that is a commercial item.

(c) “Commercial item” means -

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and that--

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for -

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if--

(i) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services--

(i) Catalog price means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) Market prices means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

(7) Any item, combination of items, or service referred to in paragraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) "Component" means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).

(e) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(f) "Nondevelopmental item" means -

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (f)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (f)(2) solely because the item is not yet in use.

(g) Except as otherwise provided in this contract, the term “subcontracts” includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

I.58 952.202-1 DEFINITIONS.

(a) As prescribed in 902.200, insert the clause at FAR 52.202-1 in all contracts. The contracting officer shall substitute the following for paragraph (a) of the clause.

(a) Head of Agency means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.

(b) The following shall be added as paragraph (h) except it will be designated paragraph (g) if Alternate I of the FAR clause is used.

(h) The term DOE means the Department of Energy and FERC means the Federal Energy Regulatory Commission.

I.59 52.203-5 COVENANT AGAINST CONTINGENT FEES. (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) “Bona fide agency,” as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

“Bona fide employee,” as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

“Contingent fee,” as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

“Improper influence,” as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

I.60 52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1995)

(a) *Definitions.*

“Kickback,” as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract..

“Person,” as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

“Prime contract,” as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

“Prime Contractor” as used in this clause, means a person who has entered into a prime contract with the United States.

“Prime Contractor employee,” as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

“Subcontract,” as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

“Subcontractor,” as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

“Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from -

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

I.61 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT. (JUL 1995)

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for

debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

I.62 52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT. (OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications.

I.63 52.216-19 ORDER LIMITATIONS (OCT 1995)(APPLICABLE TO ITEMS 4 THROUGH 8)

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than 1 sample, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor -

(1) Any order for a single item in excess of 64 samples;

(2) Any order for a combination of items in excess of 100 samples.

(3) A series of orders from the same ordering office within 180 days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (i.e. includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 10 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

I.64 52.216-22 INDEFINITE QUANTITY. (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after more than six (6) months after the contract completion date.

I.65 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES. (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

I.66 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS. (DEC 2001)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on-

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS100, entitled "Federal Contractor Veterans' Employment Report (VETS100 Report)".

(c) The Contractor shall submit VETS100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date-

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that-

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the offeror or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

I.67 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED. (MAY 1989)

(a) *Definitions.* "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*).

"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.*, the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and

promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of compensation.* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to furnish fringe benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any

subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) *Safe and sanitary working conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act -

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective bargaining agreements applicable to service employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority list.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last

month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) *Contractor's certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations, tolerances, and exemptions involving employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision -

- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
 - (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
 - (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and
 - (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.
- (t) *Disputes concerning labor standards.* The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

I.68 52.227-1 AUTHORIZATION AND CONSENT. (JUL 1995) ALTERNATE I (APR 1984)

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.
- (b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

I.69 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL). (JUN 1987)

Except for data contained on pages [NONE], it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data - General" clause contained in this contract) in and to the technical data contained in the proposal, upon which this contract is based.

I.70 52.232-18 AVAILABILITY OF FUNDS. (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

I.71 52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR. (APR 1984)

Funds are not presently available for performance under this contract beyond September 30, 2003. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond September 30, 2003, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

I.72 52.204-7 CENTRAL CONTRACTOR REGISTRATION. (OCT 2003)

- (a) Definitions. As used in this clause-

"Central Contractor Registration (CCR) database" means the primary Government repository for Contractor information required for the conduct of business with the Government.

"Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

"Data Universal Numbering System +4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at Subpart 32.11) for the same parent concern.

"Registered in the CCR database" means that-

- (1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and
 - (2) The Government has validated all mandatory data fields and has marked the record "Active".
- (b)
- (1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.
 - (2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS +4 number that identifies the offeror's name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.
- (c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.
- (1) An offeror may obtain a DUNS number-
 - (i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or
 - (ii) If located outside the United States, by contacting the local Dun and Bradstreet office.
 - (2) The offeror should be prepared to provide the following information:
 - (i) Company legal business.
 - (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
 - (iii) Company Physical Street Address, City, State, and Zip Code.
 - (iv) Company Mailing Address, City, State and Zip Code (if separate from physical).
 - (v) Company Telephone Number.
 - (vi) Date the company was started.
 - (vii) Number of employees at your location.
 - (viii) Chief executive officer/key manager.
 - (ix) Line of business (industry).
 - (x) Company Headquarters name and address (reporting relationship within your entity).
- (d) If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.
- (e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(g)

(1)

(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to

(A) change the name in the CCR database;

(B) comply with the requirements of Subpart 42.12 of the FAR; and

(C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (g)(1)(i) of this clause, or fails to perform the agreement at paragraph (g)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(h) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

I.73 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST. (JUN 1997)

(a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Contractor's Work Product.

(i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of two

(2) years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

(i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not:

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award.

(1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may

include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.

I.74 52.233-1 DISPUTES. (JUL 2002) ALTERNATE I (DEC 1991)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

I.75 52.233-3 PROTEST AFTER AWARD. (AUG 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either -

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if -

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or

33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

I.76 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS. (APR 1984)

(a) Notwithstanding any other clause of this contract -

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

I.77 52.243-1 CHANGES FIXED-PRICE. (AUG 1987) ALTERNATE I (APR 1984)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

I.78 52.246-25 LIMITATION OF LIABILITY - SERVICES. (FEB 1997)

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that -

(1) Occurs after Government acceptance of services performed under this contract; and

(2) Results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of -

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

SECTION J - LIST OF ATTACHMENTS**J.1 LIST OF ATTACHMENTS (MAR 1999)**

ATTACHMENT	DESCRIPTION	PAGES
A	Statement of Work	42-46
B	Reporting Requirements	47-51
C	By-Product Testing and Analyses Methods	52
D	Department of Labor Wage Determination	53

J.2 ATTACHMENT A - STATEMENT OF WORK (MAR 1999)

PERFORMANCE WORK STATEMENT Characterization of Coal Utilization By-products from Mercury Control Field Testing (DE-RP26-04NT42110)

The following format has been used for this statement of work:

- 1.0 Introduction
- 2.0 Scope
- 3.0 Performance Requirements
- 4.0 Notes/Guidance
- 5.0 Glossary

1.0 Introduction

1.1 NETL Background

In December 2000, EPA determined that it was necessary to regulate mercury emissions from coal-fired utility boilers. In anticipation of this determination, DOE/NETL has been sponsoring field evaluations of mercury control test technologies. NETL selected eight mercury control projects in 2003 and anticipates additional selections in 2004. These projects utilize various technologies to remove the mercury from the flue gas at coal-burning electric power generating facilities. Some of the technologies may deposit additional quantities of Hg onto the by-products. The by-product samples from these tests will be forwarded to the contractor for testing and analyses.

Regardless of the final end-use of by-products, the material is often exposed to extreme conditions that may influence the release of mercury and other elements from the materials. For instance, in two of the largest reuse categories, concrete and wallboard manufacturing, the by-product material is exposed to high temperatures to produce the final product. Due to the high vapor pressure of mercury, there are questions regarding the fate of the mercury when Hg-containing by-products are processed in these ways. Similarly, many by-products will come into contact with water while handled at the utility or subsequently disposed of in the environment. There is a possibility that the mercury associated with the by-products could be released if appropriate aqueous conditions exist. Finally, as methylation is the likely route of human exposure to mercury, it is unclear if, upon disposal, indigenous bacteria can liberate mercury from the by-products. Annually, there are approximately 129 M tons of by-products generated in the U.S., of which, approximately 45 M tons (35%) are reused.

1.2 NETL Mission

The primary mission of the NETL is to conduct and implement science and technology programs to resolve the environmental, supply, and reliability constraints of producing and using fossil resources. This work is segmented according to coal, oil, and gas programs.

1.3 Goal of This Contract

NETL is interested in understanding any potential mercury pathways into the environment. The goal of this contract is to determine the fate of mercury and other elements in by-products streams in order to guarantee that mercury removal from the flue gas is not counteracted by release of mercury and other elements from the by-products.

In doing so, this activity will support NETL's Innovation For Existing Plants Program goals of maintaining current utilization practices of coal utilization by-products and increasing utilization to 50% by 2010.

2.0 Scope

2.1 Types of Services

The Contractor shall evaluate potential mercury (Hg) and other element (arsenic, cadmium, lead and selenium) releases from by-product samples (including halide on select samples) generated at coal burning utilities. The samples will be collected from mercury control projects funded by NETL and provided to the Contractor. The by-product samples will include fly ash, flue gas desulfurization solids (FGD) and FGD liquid.

The types of services included in this contract are:

- By-product volatilization test and subsequent analytical analyses
- Microbial methylation test and subsequent analytical analyses
- By-product leaching test and subsequent analytical analyses
- Total concentration of mercury, selenium, arsenic, cadmium and lead analyses

2.2 Resources

2.2.1 Contractor-Furnished Resources

The contractor shall furnish all personnel, facilities, equipment, materials and supplies necessary to perform the work under this contract.

2.2.2 Government-Furnished Resources

The Government will provide the by-product samples for testing and analyses. The Government will not furnish any other equipment and materials needed by the contractor to perform the work described in this SOW.

3.0 Service Area – BY-PRODUCT TESTING AND ANALYSIS

1. General Requirements

Provide coal combustion by-product testing and analyses for NETL. The by-product samples will include fly ash, flue gas desulfurization solids and flue gas desulfurization liquids which will be shipped to the contractor laboratory by the respective contractors collecting the samples. The methods will not be prescribed by the Government but instead the contractor's proposed methods will be incorporated into the contract in Section J, Attachment C. By-product testing and analyses includes receipt and itemizing of the by-products; analyses of the by-products for total concentrations of mercury, arsenic, selenium, cadmium, nickel and lead; development of a leaching method to be used on by-product samples to assess the potential release of mercury, arsenic, selenium, cadmium, nickel and lead to the environment and subsequent analyses of the samples generated from this leaching method; development of a volatilization method to assess the potential release of mercury, arsenic, selenium, cadmium, nickel and lead to the environment and subsequent analyses of the samples generated from this method; the development of a microbiological method to assess the potential methylation and subsequent potential release of mercury, arsenic, selenium, cadmium, nickel and lead to the environment; periodic data updates/presentations to NETL; and data reports as per required.

2. Performance

a. Receipt and Itemizing of By-products

The by-product materials should be itemized upon receipt including date of arrival, location of testing (plant & pollution control device, collection date and location (e.g. Hopper #1, Unit #1)), test company and quantity and quality of materials (i.e., 5/30/2004, Yates Power Plant/Unit 1 ESP, URS Corporation, 2 buckets of fly ash material). Upon receipt, the Contractor shall assign a code

to the samples so that the samples can be tracked throughout the entire process and not confused with other samples.

b. Volatilization Testing and Analyses

Using the Contractor's incorporated volatilization method of analyses and testing, the Contractor shall perform analysis and testing of the by-product for mercury, arsenic, selenium, cadmium, nickel and lead. Each sample shall have triplicate analyses and testing performed. The Contractor shall provide the COR with a report detailing the test conducted, description of the handling of the solid and liquid samples, analytical equipment utilized, limit of detection and results of the analyses as indicated in paragraph g below.

c. Microbial Testing and Analyses to Assess Methylation

Using the Contractor's incorporated microbiological method of analyses and testing, the Contractor shall perform analysis and testing of the by-product for mercury, arsenic, selenium, cadmium, nickel and lead. Each sample shall have triplicate analyses and testing performed. The Contractor shall provide the COR with a report detailing the test conducted, description of the handling of the solid and liquid samples, analytical equipment utilized, limit of detection and results of the analyses as indicated in paragraph g below.

d. Leaching Testing and Analyses

Using the Contractor's incorporated leaching method of analyses and testing, the Contractor shall perform analysis and testing of the by-product for mercury, arsenic, selenium, cadmium, nickel and lead. Each sample shall have triplicate analyses and testing performed. The Contractor shall provide the COR with a report detailing the test conducted, description of the handling of the solid and liquid samples, analytical equipment utilized, limit of detection and results of the analyses as indicated in paragraph g below.

e. Total Analyses for Element Concentrations

Using the Contractor's incorporated method of total analyses and testing, the Contractor shall perform analysis and testing of the by-product for mercury, arsenic, selenium, cadmium, nickel and lead. Each sample shall have triplicate analyses and testing performed. The Contractor shall provide the COR with a report detailing the test conducted, description of the handling of the solid and liquid samples, analytical equipment utilized, limit of detection and results of the analyses as indicated in paragraph g below.

f. Limited Analyses for Halides

Select samples, as directed, will be required to be analyzed for halide compounds (iodine, bromine or chlorine). Total analyses for halide concentrations of select samples will be required as in section E above. Additionally, halide analyses shall be performed on selected samples of the leachate generated in section D above or selected samples of the gas samples generated in section B above.

g. Periodic Data Updates/Presentations to NETL

The contractor shall provide data presentations to NETL yearly at a minimum throughout the contract period, including a kick-off meeting with the proposed work presented.

h. Data Reports as Per Required

The contractor shall be required to present electronic data updates to the NETL-COR monthly at a minimum detailing the test conducted, description of the handling of the solid and liquid samples,

analytical equipment utilized, limit of detection and results of the analyses.

At the completion of all testing and analysis, the contractor shall submit a final report that explains all of the testing procedures used, analytical procedures and results. Reported analytes from the leaching, volatilization and microbial mobilization testing will include: As, Cd, Hg, Ni and Pb (and halides on select samples) as well as total solid phase concentrations of these elements in the FGD or fly ash samples. The results should be presented in tabular form. Insofar as each sample consists of three analytical replicates the table will list the mean values and confidence intervals for each sample. The results should be presented in at least three separate tables (leaching, volatilization and microbial mobilization). All of these tables must also include the total elemental analyses for each FGD or fly ash sample.

4.0 Notes/Guidance

1. The contractor shall be responsible for the report data and analyses subcontracted to provide any services required of this SOW.
2. Any subcontracts valued in excess of \$500 must be approved by the Contracting Officer prior to award of a subcontract.

5.0 Glossary

5.1 Acronyms

<u>Acronyms</u>	<u>Definition</u>
(TBD)	To Be Determined
AAD	Acquisition and Assistance Division
CO	Contracting Officer
COR	Contracting Officer's Representative
DOE	Department of Energy
NETL	National Energy Technology Laboratory
OPM	Office of Personnel Management
SOPS	Standard Operating Procedures
SOW	Statement of Work/Performance Work Statement

J.3 ATTACHMENT B REPORTING REQUIREMENTS CHECKLIST (JULY 1999)**1. AWARDEE: TBD****2. IDENTIFICATION NUMBER: DE-RP26-04NT42110****REPORT SUBMISSION:**

Reports shall be submitted to the electronic addresses and mailing address indicated in the NETL-identified Distribution List provided in the post award debriefing.

4. PLANNING AND REPORTING REQUIREMENTS

	FORM NO.	FREQ.	NO. OF COPIES		FORM NO.	FREQ.	NO. OF COPIES
A. GENERAL MANAGEMENT				E. TECHNICAL (One paper copy and One pdf electronic file copy)			
* <input type="checkbox"/> Management Plan	None			<input type="checkbox"/> Technical Progress Report	None		
<input checked="" type="checkbox"/> Status Report	None	M	**	Final Report	None		
<input checked="" type="checkbox"/> Summary Report	1332.2	M	**	<input type="checkbox"/> Draft for Review	None		
<input type="checkbox"/> Performance Self Assessment Report	None			<input type="checkbox"/> Final for Approval	None		
B. SCHEDULE/LABOR/COST				<input type="checkbox"/> Topical Report			
* <input type="checkbox"/> Milestone Schedule/Plan	1332.3			F. PROPERTY			
* <input type="checkbox"/> Labor Plan	1332.4			<input type="checkbox"/> Report of Contractor's Property Management System	None		
* <input type="checkbox"/> Cost Plan	1332.7			<input type="checkbox"/> Annual Report of Property in The Custody of Contractor	F580.1-8		
<input type="checkbox"/> Milestone Schedule/Status Report	1332.3			<input type="checkbox"/> High Risk Property Report	F580.1-25		
<input type="checkbox"/> Labor Management Report	1332.8			<input type="checkbox"/> Report of Physical Inventory of Capital Equipment	None		
<input type="checkbox"/> Cost Management Report	See Text			<input type="checkbox"/> Report of Physical Inventory of Sensitive Items	None		
C. EXCEPTION				<input checked="" type="checkbox"/> Report of Termination or or Completion Inventory	SF-1428; SF-120; F580.1-7	FC	**
<input type="checkbox"/> Conference Record	None			G. OTHER			
<input checked="" type="checkbox"/> Hot Line Report	None	A	**	<input type="checkbox"/> Key Personnel Staffing Report	None		
<input checked="" type="checkbox"/> Journal Articles/Conference Papers and Proceedings	None	A	**	<input checked="" type="checkbox"/> Subcontracting Report	SF-294	SS	**
D. ENVIRONMENTAL ES&H				<input checked="" type="checkbox"/> Summary Subcontracting Report	SF-295	YS	**
<input checked="" type="checkbox"/> Hazardous Substance Plan	None	O	**	<input type="checkbox"/> Software	None		
<input checked="" type="checkbox"/> Hazardous Waste Report	None	FC	**	<input type="checkbox"/> Staffing Report Summary	See Text		
<input checked="" type="checkbox"/> ES&H Hot Line Report	None	A	**	<input type="checkbox"/> Invoice Detail Report	See Text		
<input type="checkbox"/> DOE NETL ES&H Reports (DOE O 231.1, M 231.1-1, O 232.1)	See Orders & Manuals						
<input checked="" type="checkbox"/> Integrated Safety Management Plan (DOE 450.4)	See DOE Order	O***	**				

5. Frequency Codes and Due Dates:

Definition	Calendar days due after event	Definition	Calendar days due after event
A – As Required (See attached text for applicability)	0	O – Once After Award	30
C – Contract Change	15	Q – Quarterly (End of Calendar Quarter)	30
FC – Final End of Effort	0	S – Semi-Annual (End of project year and project year half)	20
FD – Final Technical – Draft Version	-60	Y – Yearly (End of project year, see narrative for details)	30
M – Monthly	15	PY – Yearly Plan for following Federal Fiscal Year	
E – End of Evaluation Period	20		

Property Reports

P – Property Management System – Within 6 months of award date
 YP – Yearly Property – due 10/15 for period ending 9/30
 I – Physical Inventory of Capital Equipment – Biennial from award start date

Other

SS – Subcontracting Report – Semi-Annual due 4/30 and 10/30 for period Ending 3/31 and 9/30 respectively
 YS – Summary Subcontracting – Annually due 10/30 for period ending 9/30

* The yearly plans, identified as required in Sections 4A and 4B, are due by September 15 for the following Federal Fiscal Year.

** Reports are to be distributed electronically, along with two (2) hard copies, to the NETL-identified distribution list. Report formats that are indicated shall not be deviated from. If the submission involves a DOE Standard Form, the Contractor may submit the requested information in a format of its own choosing, as long, as the same information is provided. The reports in this checklist apply to the contract in general. The Statement of Work for Tasks and Subtasks may require other specific reports and/or deliverables.

*** Plan is to be updated annually.

6. SPECIAL INSTRUCTIONS:

The forms identified, with a forms number, in the checklist are available at <http://www.netl.doe.gov/business/forms/forms.html>.

GENERAL INSTRUCTIONS FOR THE PREPARATION AND SUBMISSION OF REPORTS (MAR 1999)

The Contractor shall prepare and submit the plans and reports indicated on the "Reporting Requirements Checklist" to the electronic addresses and mailing addresses provided in the NETL-identified Distribution List. The Distribution List will be provided at the post award debriefing with the Contractor. The level of detail the Contractor provides in the plans and reports shall be commensurate with the scope and complexity of the effort and shall be as delineated in the guidelines and instructions contained herein. The prime Contractor shall be responsible for acquiring data from any subcontractors to ensure that data submitted are compatible with the data elements which prime Contractors are required to submit to DOE.

STATUS REPORT

The Status Report presents the Contractor's narrative technical assessment of the work actually performed and the overall status of the various tasks and subtasks. Open items requiring action by either the Contractor or DOE are noted in this report. The report also provides a summary assessment of the current situation, including forecast for the near future and the expected impact on task and/or subtask accomplishment. The report is to include a listing of the major products for each task and subtask in bullet form and, if applicable, a list of pertinent presentations and publications.

SUMMARY REPORT DOE F 1332.2

The Summary Report provides a concise, top-level synopsis of schedule, labor, and cost performance. Most data are presented graphically. The format permits rapid visual comparison of schedule, labor, and cost data. Three components are presented: a cost status graph, a labor status graph, and a milestone chart. The cost and labor graphs are presented on a cumulative basis. Planned and actual numerical data are presented for the specified period. Labor and cost variances are shown on a monthly and cumulative.

HOT LINE REPORT (MAR 2002)

The "Hot Line" Report may be used to report a major breakthrough in research, development, or design; an event causing a significant schedule slippage or cost overrun; an environmental, safety and health violation; achievement of or failure to achieve an important technical objective; or any requirement for quickly documented direction or redirection. The report shall be submitted by the most rapid means available, usually electronic, and should confirm telephone conversations with DOE representatives. Identification as a "Hot Line Report" serves notice at each link in the delivery chain that expedition in handling is required. Unless otherwise agreed by the parties involved, DOE is expected to take action and respond in a similarly timely manner. The report should include:

1. Contractor's name and address;
2. Contract title and number;
3. Date;
4. Brief statement of problem or event;
5. Anticipated impacts; and
6. Corrective action taken or recommended.

Hot line reports shall document the incidents listed below:

1. Any single fatality or injuries requiring hospitalization of five or more individuals is to be immediately reported.
2. Any significant environmental permit violation is to be reported as soon as possible, but within 24 hours of the discovery of the incident.
3. Other incidents that have the potential for high visibility in the media are to be reported as quickly as possible, but within 24 hours following discovery.
4. Any failure resulting in damage to Government-owned equipment in excess of \$50,000 is to be reported as quickly as possible, but within 24 hours of the discovery of the failure.

5. Any unplanned event which is anticipated to cause a schedule slippage or cost increase significant to the project is to be reported within 24 hours.
6. Any verbal or written Notice of Violation of any Environmental, Safety, and Health statutes arising from the performance of this contract is to be immediately reported.
7. Any accidental spill or release which is in violation of any Environmental, Safety, and Health statutes arising from the performance of this contract is to be immediately reported, but within 24 hours of the discovery of the accident.
8. Any incident which causes a significant process or hazard control system failure, or is indicative of one which may lead to any of the above defined incidents, is to be reported as soon as possible, but within 5 days of discovery.

The requirement to submit Hot Line Reports for the incidents identified in 1, 2, 3, 6, or 7 is for the sole purpose of enabling DOE officials to respond to questions relating to such events from the media and other public.

When an incident is reported in accordance with 4, 5, 6, 7, or 8, the Contractor shall conduct an investigation of its cause and make an assessment of the adequacy of resultant action. A written report is required no later than ten (10) calendar days following the incident and shall include an analysis of the pertinent facts regarding the cause, and a schedule of the remedial events and time periods necessary to correct the action.

When an event results in the need to issue a written or verbal statement to the local media, the statement is to be cleared first; if possible, and coordinated with NETL's Office of Public Affairs, the Contracting Officer Representative (COR) and the Contracting Officer.

JOURNAL ARTICLES, CONFERENCE PAPERS AND PROCEEDINGS GENERATED BY LARGE BUSINESSES FOR DOE REVIEW (SEPT 2000)

The Contractor shall submit to DOE for review and approval all documents generated by the Contractor, or any subcontractor, which communicate the results of scientific or technical work supported by DOE under this award, whether or not specifically identified in the award, prior to submission for publication, announcement, or presentation. Such documents include journal articles, conference papers and proceedings, etc. Each such document shall be accompanied by a properly completed NETL Form 510.1-5, "Request for Patent Clearance for Release of Contracted Research Documents."

The Contractor shall simultaneously submit a draft version of the document to the DOE COR and the DOE Patent Counsel Office prior to the publication, presentation, or announcement. The document submitted to the DOE Patent Counsel shall be accompanied by a completed NETL Form 510.1-5. The DOE COR and DOE Patent Counsel shall review the draft version of the document and notify the Contractor of approval or recommended changes. The approved final version shall be submitted to the NETL AAD Document Control Coordinator.

The following information shall be provided for conference papers and proceedings, etc.

- Name of conference
- Location of conference (city, state, and country)
- Date of conference (month/day/year)
- Conference sponsor

HAZARDOUS SUBSTANCE PLAN (MAY 1999)

The Contractor shall submit a Hazardous Substance Plan not later than thirty (30) days after initial contract award. The Plan shall specifically identify each Hazardous Substance (as defined under 40 CFR 261, Subpart D, entitled "Lists of Hazardous Wastes") anticipated to be purchased, utilized or generated in the performance of this contract. For each such Hazardous Substance identified, the Plan shall specifically provide the following information:

- Description of Substance/Chemical
- EPA Hazardous Waste Number
- EPA Hazard Code

Anticipated Quantity to be purchased, utilized or generated
 Anticipated Hazardous Waste Transporter
 Anticipated Hazardous Waste Disposal Facility Contractor and Location (City/Municipality, State)
 Anticipated Treatment Method

HAZARDOUS WASTE REPORT (MAY 1999)

The Contractor shall submit a Hazardous Waste Report at the completion of contract performance. The Report shall specifically identify each Hazardous Waste (as defined under 40 CFR 261, Subpart D, entitled “Lists of Hazardous Wastes”) actually utilized, or generated in the performance of this contract. For each such Hazardous Waste identified, the Report shall specifically provide the following information:

Description of Substance/Chemical
 EPA Hazardous Waste Number
 EPA Hazard Code
 Actual Quantity Disposed
 Actual Hazardous Waste Transporter
 Actual Hazardous Waste Disposal Facility Contractor and Location (City/Municipality, State)
 Actual Disposal Date
 Actual Treatment Method

The Hazardous Waste Report is intended as a final reconciliation of anticipated versus actual Hazardous Substances purchased, utilized, or generated in the performance of this contract.

ES&H HOT LINE REPORT

A. The “ES&H Hot Line Report” is to be used to report an ES&H violation. The report must be submitted by the most rapid means available, usually electronic, and is to confirm telephone conversations with the DOE Representatives. Identification as an “ES&H Hot Line Report” serves notice at each link in the delivery chain that “speed in handling” is required. The report must include:

1. Contractor’s name and address
2. Contract title and number
3. Date
4. Brief statement of problem or event
5. Anticipated impacts
6. Corrective action taken or recommended

B. ES&H Hot Line Reports are to be used to document incidents such as those listed below:

1. Any non-compliance with the provisions of Clause H27 ENVIRONMENTAL, SAFETY, AND HEALTH-ON-SITE SERVICE CONTRACTS is to be reported within 3 days unless specified otherwise below.
2. Any single fatality or injuries requiring hospitalization of five or more individuals is to be immediately reported.
3. Any significant environmental permit violation is to be reported as soon as possible, but no later than 24 hours following the discovery of the incident.
4. Other ES&H incidents that have the potential for visibility in the media are to be reported as quickly as possible, but no later than 24 hours following the discovery of the incident.
5. Any failure resulting in damage to Government-owned equipment in excess of \$50,000 is to be reported as quickly as possible, but no later than 24 hours following the discovery of the failure.
6. Any verbal or written Notice of Violation of any ES&H statutes arising from the performance of this contract is to be immediately reported.

7. Any accidental spill or release that is in violation of any ES&H statutes arising from the performance of this contract is to be immediately reported.
8. Any incident that causes a significant process- or hazard-control-system failure, or is indicative of one that may lead to any of the above-defined incidents, is to be reported as soon as possible, and must be reported within 5 days of discovery.
9. When an event results in the need to issue a written or verbal statement to the local media, the statement is to be cleared first, if possible, by NETL's Public Relations Officer and coordinated with the COR.

INTEGRATED SAFETY MANAGEMENT PLAN

An Integrated Safety Management (ISM) Implementation Plan shall be developed and submitted by the Contractor. The plan shall describe how the offeror will implement ISM philosophy, as outlined in DOE P 450.4, Safety Management Policy, and Integrated Safety Management System Guide, DOE G 450.4-1, Volumes 1 and 2, into the planning, budgeting, executive, and assessment of work activities. The plan shall provide (1) a process approach to the integration of ISM's five steps (i.e., defining the scope of work, analyzing the hazards, developing and implementing controls, performing work safely, and ensuring performance) into its everyday work activities; (2) a specific management approach to demonstrate ISM's seven guiding principles (i.e., workforce responsibility and accountability; clear roles, responsibilities and authorities; competence commensurate with responsibilities; balance priorities; identification of ES&H standards and requirements; hazard controls tailored to work being performed; and work authorization); and (3) a discussion on how the execution of the offeror's plan will successfully and cost-effectively integrate with NETL's own ISM and ES&H programs for on-site work to be conducted. An annual update is also required.

REPORT OF TERMINATION OR COMPLETION INVENTORY (SF-1428 AND SF-120) (MAR 1999)

This report submitted on the SF-1428 and SF-120 is due immediately upon completion or termination of the contract. The Contractor is required to perform and cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Government property applicable to the contract.

SUBCONTRACT REPORTING (OCT 2001)

With the exception of a small business, reports listed below are required to be submitted electronically by the prime Contractor for each contract containing a subcontracting plan. These electronic forms collect subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over \$500,000 of the Government share amount (over \$1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. Subcontract award data reported by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors.

SUBCONTRACTING REPORT (SF294)

Semi-annual Frequency
 Period End Dates: 3/31 and 9/30
 Due Dates: 4/30 and 10/30

Note: The first deliverable of this report is due whichever of the two dates is at least 60 calendar days after the award start date.

SUMMARY SUBCONTRACTING REPORT (SF295)

Annual Frequency
 Period End Date: 9/30
 Due Date: 10/30

Note: The first deliverable of this report is only required for the next period end date of 9/30, which is at

least 60 calendar days after the award start date.

SUBCONTRACT REPORTING SYSTEM (SRS)

All subcontracting reports SF294's and SF295's must be submitted electronically. Access to the SRS can be made at <http://www1.pr.doe.gov/srs/>. All Contractors must register with the Headquarters SRS Systems Manager and use it to submit the required reports. When registering, the Contractor must provide a valid DUNS number. When registration is approved, the Contractor may use the system simply by logging in with his or her user name and password and transmit SF-294 and 295 data to the contracting office that requires the report. After review by the contracting office, the data will be forwarded via the Internet to DOE Headquarters. A comprehensive manual for the system may be found at <http://www1.pr.doe.gov/srs.wpd> (WordPerfect Version) or <http://www1.pr.doe.gov/srs.doc> (Word Version).

J.4 ATTACHMENT C – BY-PRODUCT TESTING AND ANALYSES METHODS

A copy of Offeror's proposed methods for testing and analyses will be incorporated into the subsequent contract as Attachment C.

J.5 ATTACHMENT D – DEPARTMENT OF LABOR WAGE DETERMINATION

A copy of Department of Labor Wage Determination specific to the awardees location will be incorporated in this contract and attached as a separate .pdf file (entitled 42110 Attachment D.pdf). Wage Determinations may be viewed at the following site for preparation of proposals: <http://www.wdol.gov>

SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS OR QUOTERS

K.1 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (APR 1991)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989 -

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

K.2 52.204-3 TAXPAYER IDENTIFICATION. (OCT 1998)

(a) *Definitions.*

“Common parent,” as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

“Taxpayer Identification Number (TIN),” as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to

the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) *Taxpayer Identification Number (TIN).*

☐ TIN: _____.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

☐ Offeror is an agency or instrumentality of a Foreign Government;

☐ Offeror is an agency or instrumentality of the Federal Government.

(e) *Type of organization.*

☐ Sole proprietorship;

☐ Partnership;

☐ Corporate entity (not tax-exempt);

☐ Corporate entity (tax-exempt);

☐ Government entity (Federal, State, or local);

☐ Foreign Government;

☐ International organization per 26 CFR 1.6049-4;

☐ Other _____.

(f) *Common parent.*

☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

☐ Name and TIN of common parent:

Name _____

TIN _____

K.3 52.204-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS). (MAY 1999)

(a) *Definition.* "Women-owned business concern," as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Representation.* [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, Small Business Program Representations, of this solicitation.] The offeror represents that it * is a women-owned business concern.

K.4 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS. (DEC 2001)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that -

(i) The Offeror and/or any of its Principals -

(A) Are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ☐ have not ☐, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are ☐ are not ☐ presently indicted for, or otherwise criminally or civilly charged by a Governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) The Offeror has ☐ has not ☐, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

K.5 52.215-6 PLACE OF PERFORMANCE. (OCT 1997)

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend [*check applicable block*] to use one or more plants or facilities located at a different

address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

(b) If the offeror or respondent checks “intends” in paragraph (a) of this provision, it shall insert in the following spaces the required information:

Place of Performance (Street Address, City, State, County, Zip Code)	Name and Address of Owner and Operator of the Plant or Facility if Other than Offeror or Respondent
--	--

K.6 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS. (APR 2002) - ALTERNATE I (APR 2002)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is 541380.

(2) The small business size standard is 10.0 million.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) *Representations.* (1) The offeror represents as part of its offer that it ☐ is, ☐ is not a small business concern.

(2) *[Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The offeror represents, for general statistical purposes, that it ☐ is, ☐ is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) *[Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The offeror represents as part of its offer that it ☐ is, ☐ is not a women-owned small business concern.

(4) *[Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The offeror represents as part of its offer that it ☐ is, ☐ is not a veteran-owned small business concern.

(5) *[Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.]* The offeror represents as part of its offer that it ☐ is, ☐ is not a service-disabled veteran-owned small business concern.

(6) *[Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.]* The offeror represents, as part of its offer, that-

(i) It ☐ is, ☐ is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. *[The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.]* Each HUBZone small

business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(7) [Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.]
The offeror shall check the category in which its ownership falls:

_____ Black American.

_____ Hispanic American.

_____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

_____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

_____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

_____ Individual/concern, other than one of the preceding.

(c) *Definitions.* As used in this provision -

“Service-disabled veteran-owned small business concern” -

(1) Means a small business concern -

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (a) of this provision.

“Veteran-owned small business concern” means a small business concern -

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern -

(1) That is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) *Notice.* (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall -

- (i) Be punished by imposition of fine, imprisonment, or both;
- (ii) Be subject to administrative remedies, including suspension and debarment; and
- (iii) Be ineligible for participation in programs conducted under the authority of the Act.

K.7 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS. (FEB 1999)

The offeror represents that -

- (a) It ☐ has, ☐ has not participated in a previous contract or subcontract subject the Equal Opportunity clause of this solicitation;
- (b) It ☐ has, ☐ has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

K.8 52.222-25 AFFIRMATIVE ACTION COMPLIANCE. (APR 1984)

The offeror represents that -

- (a) It ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or
- (b) It ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

K.9 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING. (JUN 2003)

(a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

(b) By signing this offer, the offeror certifies that -

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: *[Check each block that is applicable.]*

☐ (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

☐ (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

☐ (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

☐ (iv) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

☐ (v) The facility is not located in the United States or its outlying areas.

K.10 52.227-15 REPRESENTATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE. (MAY 1999)

(a) This solicitation sets forth the work to be performed if a contract award results, and the Government's known delivery requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 52.227-16 of the FAR, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data - General clause at 52.227-14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(b) As an aid in determining the Government's need to include Alternate II or Alternate III in the clause at 52.227-14, Rights in Data - General, the offeror shall complete paragraph (c) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(c) The offeror has reviewed the requirements for the delivery of data or software and states [*offeror check appropriate block*] -

☐ None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

☐ Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

Note: "Limited rights data" and "Restricted computer software" are defined in the contract clause entitled "Rights in Data - General."

K.11 COMPLIANCE WITH VETERANS EMPLOYMENT REPORTING REQUIREMENTS (JUNE 1999)

(a) The Offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e. the VETS-100 report required by the Federal Acquisition Regulation clause 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era), it has [], has not [] submitted the most recent report required by 38 U.S.C. 4212(d).

(b) An Offeror who checks “has not” may not be awarded a contract until the required reports are filed. (31 U.S.C. 1354)

K.12 SIGNATURE/CERTIFICATION (SEP 2003)

By typing the name of the authorized organizational representative (i.e. the administrative official, who, on behalf of the proposing organization, is authorized to make certifications and assurances or to commit the offeror to the conduct of a project), the offeror certifies, under penalty of law, that the representations and certifications are accurate, current, and complete. The offeror further certifies that it will notify the Contracting Officer of any changes to these representations and certifications. The representations and certification made by the offeror, as contained herein, concern matters within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent representation or certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

Typed Name and Title of the Officer or Employee
Responsible for the Offer

Date of Execution

Name and Address of Organization:

Solicitation Number: _____

SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS OR QUOTERS**L.1 CONSECUTIVE NUMBERING (JAN 1999)**

Due to automated procedures employed in formulating this document, clauses and provisions contained within it may not always be consecutively numbered.

L.2 CONTENT OF RESULTING CONTRACT (NOV 1998)

Any contract awarded as a result of this RFP will contain PART I - The Schedule, PART II - Contract Clauses, and PART III, Section J - List of Documents, Exhibits and Other Attachments (excluding those attachments included in this RFP relating to submission of proposals). Blank areas appearing in these sections, indicated by "[TBD]" will be completed prior to contract award.

Offerors should carefully review the information contained therein, and, as appropriate, state any proposed exceptions/deviations per FAR 52.215-1.

L.3 RESPONSIBLE PROSPECTIVE CONTRACTORS (JUNE 1999)

All responsible individuals, corporations, non-profit organizations, educational institutions, and state or local governments may submit proposals for consideration. The general and additional minimum standards for responsible prospective Contractors set forth at FAR 9.1 apply.

DOE may conduct preaward surveys in accordance with FAR 9.106 and may solicit from available sources, relevant information concerning the offeror's record of past performance, and use such information in making determinations of prospective offeror responsibility.

L.4 NUMBER OF AWARDS (NOV 1997)

It is anticipated that there will be [1] award(s) resulting from this solicitation. However, the Government reserves the right to make any number of awards, or no award, if considered to be in the Government's best interest to do so.

L.5 52.215-1 INSTRUCTIONS TO OFFERORS - COMPETITIVE ACQUISITION. (MAY 2001)

(a) *Definitions.* As used in this provision -

"Discussions" are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

"In writing, writing, or written" means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

"Proposal modification" is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

"Proposal revision" is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

"Time," if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) *Amendments to solicitations.* If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, modification, revision, and withdrawal of proposals.* (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii)

showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show -

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) *Submission, modification, revision, and withdrawal of proposals.* (i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and -

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) *Offer expiration date.* Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) *Restriction on disclosure and use of data.* Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall -

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed - in whole or in part - for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of - or in connection with - the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) *Contract award.* (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) The Government may disclose the following information in postaward debriefings to other offerors:

- (i) The overall evaluated cost or price and technical rating of the successful offeror;
- (ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;
- (iii) A summary of the rationale for award; and
- (iv) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

L.6 FALSE STATEMENTS (NOV 1997)

Proposals must set forth full, accurate, and complete information as required by this solicitation (including attachments). The penalty for making false statements in proposals is prescribed in 18 U.S.C. 1001.

L.7 EXPENSES RELATED TO OFFEROR SUBMISSIONS (FEB 1998)

This solicitation does not commit the Government to pay any costs incurred in the submission of any proposal or in making necessary studies or designs for the preparation thereof or to acquire or contract for any services.

L.8 ALTERNATE PROPOSAL INFORMATION - NONE (NOV 1997)

Alternate proposals are not solicited, are not desired, and shall not be evaluated.

L.9 AMENDMENT OF THE SOLICITATION – IIPS (JULY 2001)

The only method by which any term of this solicitation may be modified is by an express, formal amendment to the solicitation generated by the issuing office. No other communication made at any schedule preproposal conference or subsequent discussions, whether oral or in writing, will modify or supersede the terms of this solicitation. All amendments to this solicitation will be posted on the IIPS Homepage. Offerors are encouraged to periodically check IIPS to ascertain the status of any amendments as hard copies will not be distributed. Receipt of an amendment to a solicitation by an offeror must be acknowledged and received prior to the hour and date specified for receipt of offers.

L.10 CLASSIFIED MATERIAL - NONE (NOV 1997)

Performance under the proposed contract is not anticipated to involve access to classified material.

L.11 TIME, DATE AND PLACE PROPOSALS ARE DUE -- IIPS (MAY 2003)

Proposals and amendments of proposals must be received by **8/24/2004**, not later than 8:00 PM Eastern Time. You are encouraged to transmit your proposal well before the deadline in order to prevent any transmission difficulties.

PROPOSALS, OR PROPOSAL FILES, THAT HAVE AN IIPS DATE/TIME STAMP LATER THAN THE DEADLINE WILL NOT BE REVIEWED OR CONSIDERED FOR AWARD.

L.12 52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER. (OCT 2003)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS number or "DUNS+4" that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet, Inc. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11) for the same parent concern.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number-

(i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business name.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company physical street address, city, state and Zip Code.

(iv) Company mailing address, city, state and Zip Code (if separate from physical).

(v) Company telephone number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

L.13 IIPS PROPOSAL PREPARATION INSTRUCTIONS - GENERAL (JUNE 2003)

Proposals are expected to conform to the solicitation provision entitled "Instructions to Offers - Competitive Acquisition" and be prepared in accordance with this section. Bidders/Offerors are advised that the submission of your proposal in an electronic format is required utilizing the Industry Interactive Procurement System (IIPS) through the Internet at <http://e-center.doe.gov/>. IIPS provides the medium for disseminating solicitations, receiving proposals, and evaluating proposals in a paperless environment. Individuals who have the authority to enter their company into a legally binding contract and intend to submit proposals via the IIPS system must register and receive confirmation that they registered prior to being able to submit an application on the IIPS System. **An IIPS "User Guide for Contractors" can be obtained by going to the IIPS Homepage at <http://e-center.doe.gov> and then clicking on the "Help" button.** Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at IIPS_HelpDesk@e-center.doe.gov or call the Help Desk at (800) 683-0751.

To aid in evaluation, proposals shall be clearly and concisely written as well as being neat, indexed (cross-indexed as appropriate), and logically assembled. All pages of each part shall be appropriately numbered, and identified with the name of the offeror, the date, and the solicitation number to the extent practicable. Proposal files are to be formatted in one of the following applications: **Adobe Acrobat PDF, Microsoft Word (2002 or earlier), and/or Microsoft Excel (2002 or earlier).**

(a) OVERALL ARRANGEMENT OF PROPOSAL

The overall proposal shall consist of 3 physically separated volumes, individually entitled as stated below and submitted through IIPS at <https://e-center.doe.gov>.

PROPOSAL VOLUME -- TITLE**SIZE LIMITATION**

Volume I -- Offer and Other Documents

None

Volume II -- Technical Proposal

42 pages (excluding cover page, table of contents, resumes, and past performance)

Volume III -- Cost Proposal

None

(b) ELECTRONIC SUBMISSION

Proposals must be submitted through the DOE Industry Interactive Procurement System (IIPS) at <http://e-center.doe.gov> in accordance with the instructions in this solicitation. ONLY PROPOSALS SUBMITTED THROUGH IIPS WILL BE CONSIDERED FOR AWARD.

You are encouraged to test the IIPS submission of proposals. An IIPS "User Guide for Contractors" can be obtained by going to the IIPS Homepage at <http://e-center.doe.gov> and then clicking on the "Help" button.

As indicated previously in this solicitation, FAR 52.215-1 Instructions to Offerors - Competitive Acquisition (MAY 2001), section (c)(3)(ii)(A)(1) applies to this solicitation.

Electronic files of a large size may take a considerable amount of time to upload. It is your responsibility to allow an adequate amount of time for your proposal submission.

(c) ELECTRONIC SIGNATURE

Proposals submitted through IIPS constitute submission of electronically signed proposals. The name of the authorized organizational representative (i.e. the administrative official, who, on behalf of the proposing organization, is authorized to make certifications and assurances or to commit the Contractor to the conduct of a project) must be typed in the signature block on the form to be accepted as an electronic signature. A scanned copy of the signed document is not required.

(d) IIPS REGISTRATION

In order to submit a proposal, you must be authorized by the offeror (i.e., institution or business entity) to submit a proposal on its behalf and you must register in IIPS. You are encouraged to register as soon as possible. You only have to register once to apply for any DOE award. To register:

- Go to the IIPS website at <http://e-center.doe.gov>.
- Click on the "Register" button on the left.
- Click on the box that says, "Check this box for Acquisitions greater than Simplified Acquisitions threshold or financial assistance".
- Click on "Proceed to Form".
- Read the "Security Alert" and click on "Yes" to proceed.
- Read the "Notice of Disclaimer" and click on "I Accept".
- Complete the Registration Form.
- Click on "Submit Registration". You will receive an acknowledgement confirming receipt of your registration.

Then you will receive an email confirming successful registration. If you do not receive an email confirmation within one business day, contact the IIPS Help Desk at 1-800-683-0751 and select option 1, or send an email to HelpDesk@e-center.doe.gov.

Note the user name on your confirmation and your password for future reference. You must use this user name and password for any proposals submitted in IIPS.

L.14 PREPARATION INSTRUCTIONS: VOLUME I - OFFER AND OTHER DOCUMENTS (MAY 2003)

Volume I, Offer and Other Documents consists of the actual offer to enter into a contract to perform the desired work. It also includes required representations, certifications, and acknowledgments, justification for noncompetitive proposed subcontracts, identification of technical data to be withheld, and any deviations taken.

When the offeror begins to "Create Proposal" for the ITES, the offeror will complete the required fields and attach the following files to the link identified as: Attach Volume I/Offer or Other Documents.

For consistency, the offeror is instructed to use the file names specified below. Filename extensions shall clearly indicate the software application used for preparation of the documents, i.e., ".pdf" for Adobe Acrobat, or ".doc" for Word files:

(a) FORMAT AND CONTENT

Volume I, Offer and Other Documents, shall include the following documents (in the order listed):

MANDATORY FILE	FILE NAME
File 1 Offer Cover Sheet	Offer Cover Sheet.---
File 2 SF33 Form -- Solicitation, Offer and Award	SF33.---
File 3 Section K - Representations and Certifications	SectionK.---
File 4 Exceptions and Deviations	Exception.---

(b) FILE 1, OFFER COVER SHEET

The Offer Cover Sheet shall consist of Company Name, address, telephone number, line of business, Chief Executive Officer/Key Manager, and DUNS number as required in FAR Clause 52.204-6 Data Universal Numbering System (DUNS) Number (OCT 2003).

(c) FILE 2, SF33 FORM - SOLICITATION, OFFER AND AWARD

The SF33 Form has been uploaded with the solicitation, as a separate Word document (SF33.doc), which can be used for the offeror to complete, save and submit as File 2. The following areas must be completed on the SF33:

- (1) Offerors shall complete Blocks 12, 15A, 15B, 15C, 16, and sign in block 17 (typed name of authorized organizational representative). The SF33 is to be fully executed, including the acknowledgment of amendments, if applicable.
- (2) The offeror's Acceptance Period (See Block 12) entered shall not be less than 180 days.
- (3) Signature Authority. The person signing the SF33 must have the authority to commit the offeror to all of the provisions of the proposal, fully recognizing that the Government has the right, by terms of the solicitation, to make an award without further discussion if it so elects. Proposals submitted through IIPS constitute submission of electronically signed proposals. The name of the authorized organizational representative (i.e. the administrative official, who, on behalf of the proposing organization, is authorized to make certifications and assurances or to commit the offeror to the conduct of a project) must be typed in the signature block on the form to be accepted as an electronic signature. A scanned copy of the signed document is not required.

(d) FILE 3, SECTION K - REPRESENTATIONS AND CERTIFICATIONS

Section K has been uploaded with the solicitation, as a separate Word document (SectionK.doc), which can be used for the offeror to complete, save and submit as File 3. Offeror Representations and Certifications included under Section K of this solicitation are to be fully completed and executed with electronic signature.

(e) FILE 4, EXCEPTIONS AND DEVIATIONS

The offeror shall identify and explain any exceptions or deviations taken or conditional assumptions made with respect to the resulting contract (as identified in L.2 Content of Resulting Contract), Offeror Representations and Certifications, and the requirements included in Volume I -- Offer and Other Documents, Volume II - Technical Proposal, and Volume III -- Cost Proposal, if applicable. Any exceptions taken must contain sufficient justification to permit evaluation. The benefit to the Government shall be explained for each exception taken. Any exceptions or deviations may make the proposal unacceptable for award without discussions. Any exceptions or deviations to Section I of the RFP, or any FAR or DEAR clauses elsewhere in the RFP, will make the proposal non-responsive to this RFP.

L.15 PREPARATION INSTRUCTIONS: VOLUME II - TECHNICAL PROPOSAL (MAY 2003)

Volume II - Technical Proposal consists of the offeror's narrative addressing the technical and management aspects of the acquisition, his capabilities and what he will do to satisfy the requirements of the Statement of Work. Since the Technical Proposal will be evaluated to determine such matters as understanding of the work to be performed, technical approach, and potential for completing the desired work, it should be specific and complete in every detail. The proposal should be practical and be prepared simply and economically, providing a straightforward, concise delineation of what it is the offeror will do to satisfy the Department of Energy's requirements as set forth in Part III, Section J, Attachment A.

The Technical Proposal shall be evaluated strictly on the merit of the material submitted. No contractual cost information is to be included in the Technical Proposal. Where estimated direct productive labor hours (DPLH) will provide clarity, they shall be quoted in DPLH figures only, with no indication as to the cost of these DPLH.

The proposal shall contain a description of the proposed lines of investigation, method of approach to the problem(s), any recommended changes to the Statement of Work, the phases or steps into which this project should logically be divided, estimated time required to complete each phase or step, and any other information considered pertinent to the problem(s).

The proposal shall not merely offer to perform work in accordance with the Statement of Work but shall describe the actual work proposed. The Statement of Work reflects the performance objectives of the program under consideration; therefore, repeating the scope of work without sufficient elaboration will not be acceptable.

(a) FORMAT AND CONTENT

When the Offeror begins to "Create Proposal" for the ITES, the Offeror will create an IIPS cover page and attach the required files to the link identified as: Attach Volume 2/ Technical Proposal.

For consistency, the Offeror is instructed to use the file names specified below. Filename extensions shall clearly indicate the software application used for preparation of the documents, i.e, ".pdf" for Adobe Acrobat, or ".doc" for Word files:

	MANDATORY FILES	FILENAME
File 1	Technical Approach Discussion	TECHNICAL.---
File 2	Experience Discussion	EXPERIENCE.---
File 3	Quality Control/Quality Assurance	QA/QC.---
File 4	Resumes of Key Personnel and/or Letters of Commitment, if applicable.	RESUMES.---
File 5	Management Approach Discussion	MANAGEMENT.---
File 6	Past Performance	PAST PERFORMANCE.---
File 7	Facilities	FACILITIES.---

(b) FILE 1, TECHNICAL APPROACH DISCUSSION

It is requested that the Technical Approach discussion not exceed twenty-five (25) pages (excluding cover page and table of contents), single spaced, using 12 point font, 1" margins, and when printed will fit on size 8 1/2" by 11" paper. DOE believes a thorough and concise technical discussion can be prepared within the requested page limit. Proposals that contain a technical discussion file in excess of the requested page limit, shall receive a significant weakness under the technical evaluation criteria of the solicitation (a 10% reduction in score will be assigned to proposals that exceed the page limitation).

To help facilitate the review process and to insure addressing all the review criteria, the Offeror shall use the

following format when preparing the Technical Approach discussion file. This format relates to the technical evaluation criteria found in Part IV -- Section M. Alternate heading names and additional headings may be included as desired.

COVER PAGE

The Technical Approach discussion file shall include a cover page indicating the solicitation number, name and address of the Offeror, point of contact, telephone/FAX number/E-Mail address, title of project, and date of proposal as per FAR 52.215-1. The title of the proposed effort should be concise and descriptive of the work to be performed. All subsequent pages shall be appropriately numbered and identified with the name of the offeror, the date, and the solicitation number to the extent practicable

TABLE OF CONTENTS

The Technical Approach discussion file shall include a Table of Contents to facilitate locating the elements of the proposal. All exhibits should be identified.

TECHNICAL APPROACH

This section shall contain the major portion of the Technical Approach discussion. It shall clearly address each of the Technical Approach evaluation criteria in Part IV -- Section M. It should be presented in as much detail as practical and include the following aspects for appropriate criteria or subordinate factors.

(a) The Offeror shall provide a technical proposal that describes its approach for satisfying the technical requirements for each of the elements in Section J, Attachment A, Statement of Work (SOW). The technical proposal shall clearly describe how the Offeror will meet the requirements identified in the SOW and ensure that technical performance meets the NETL requirement. It is suggested as a minimum, a response to each of the elements in the SOW should be provided.

Questions or Topics to address at a minimum include (questions/topics listed below will not be scored individually during the evaluation, the evaluation will be done on the offerors overall information for this area):

1. Describe your analytical method to determine total mercury, lead, arsenic, cadmium and selenium concentrations in the original solid and liquid samples that will be provided to you. These materials will include fly ash solids, flue gas desulfurization solids and FGD liquid. Include rationale to support your method selection versus other similar methods.
2. Describe your experimental design to determine if mercury, lead, arsenic, cadmium and selenium will leach from the solid samples (fly ash and FGD samples). Include rationale to support your method selection versus other similar methods.
3. Describe your experimental design to determine if mercury, lead, arsenic, cadmium and selenium will be volatilized from liquid and solid samples (fly ash, FGD solid and FGD liquid). Include justification for temperature selection. Temperature selection should take into consideration; both disposal conditions as well as potential reuse scenarios.
4. Describe your experimental design to determine if indigenous microbes could cause mercury to be released from fly ash or FGD solids upon disposal. Describe the microbial population that will be used as well as the growth media. Additionally, in the event that microbes release mercury from the by-products, describe how you will determine the form of mercury.
5. Describe the analytical equipment that will be used to analyze the samples generated in #2-#4 above for mercury, arsenic, cadmium, lead and selenium.

The methods proposed by the offeror will be incorporated into the subsequent contract in Section J, Attachment C.

(c) **FILE 2, EXPERIENCE DISCUSSION.**

It is requested that the Experience discussion not exceed five (5) pages (excluding cover page and table of contents), single spaced, using 12 point font, 1" margins, and when printed will fit on size 8 1/2" by 11" paper. DOE believes a thorough and concise discussion can be prepared within the requested page limit. Proposals that contain a file in excess of the requested page limit, shall receive a significant weakness under the evaluation criteria of the solicitation (a 10% reduction in score will be assigned to proposals that exceed the page limitation).

The Offeror shall cite experience relevant to the tasks identified in Section J, Attachment A, Statement of Work (SOW) and the proposed methodologies to accomplish those tasks. Questions or topics to address at a minimum include (questions/topics listed below will not be scored individually during the evaluation, the evaluation will be done on the offerors overall information for this area):

1. Describe your experience conducting at least two of the following leaching methods on by-product samples: TCLP, SGLP, SPLP, MWLP, and ASTM water leach for mercury and other trace metals.
2. Describe your experience conducting microbiological experimentation.
3. Describe your experience and knowledge of the mercury control regulatory process. The purpose of gathering the data from this effort is for it to be used in potential future regulatory actions. Experience should demonstrate that the Contractor has collected data to support regulatory action, standards, and/or has developed a unique method (i.e. leaching method or utilization method) associated with coal utilization by-products.
4. Describe your experience handling utility coal utilization by-products including fly ash and flue gas desulfurization materials. This also includes a detailed understanding of where these by-products are generated in the power plant, understanding how different pollution control devices affect the by-product material and the effect of coal type on the by-product composition. Specifically address the unique issues associated with handling Class C fly ash material.
5. Describe your commercial relationships with coal burning electric utilities including at least two involving by-product testing or research.
Describe your experience or capability of designing experiments to generate the liquid and gas samples from the by-product samples. This includes how the designed experiments relate to the generation and disposal of by-products.
6. How have you managed to attract and retain highly skilled technical people to perform work similar in nature to that described in the SOW?
7. Describe a few of your most significant lessons learned performing work similar in nature to that described in the SOW.
8. Describe a few of your most significant successes performing work similar in nature to that described in the SOW.
9. What are some of the proven methodologies, processes, procedures, and techniques used on previous and/or existing contracts to satisfy work similar in nature to those requirements identified in the SOW?

(d) FILE 3, QA/QC PLAN

It is requested that the quality assurance/ quality control discussion not exceed five (5) pages (excluding cover page and table of contents), single spaced, using 12 point font, 1" margins, and when printed will fit on size 8 1/2" by 11" paper. DOE believes a thorough and concise discussion can be prepared within the requested page limit. Proposals that contain a file in excess of the requested page limit, shall receive a significant weakness under the evaluation criteria of the solicitation (a 10% reduction in score will be assigned to proposals that exceed the page limitation).

The Offeror shall cite experience relevant to the tasks identified in Section J, Attachment A, Statement of Work (SOW). Questions or topics to address at a minimum include (questions/topics listed below will not be scored individually during the evaluation, the evaluation will be done on the offerors overall information for this area):

1. Describe the teams capability of designing and providing a quality assurance/quality control plan that is based on experience in similar work with coal utilization by-products.
2. What sample documentation and handling procedures will be conducted to ensure that sample identities remain intact?
3. What sampling procedures will be used for each of the proposed methods?
4. What spiking methods will be used for the analytical procedures? How frequently will samples be spiked? What is the acceptable recovery range? What corrective action(s) will result from a recovery outside of the acceptable recovery range?
5. Describe the frequency of using a standard reference material for each of the analytical methods (i.e., NIST standard). Explain how the reference standard chosen to closely mimic the elemental concentrations and matrix in the unknowns? What is the acceptable recovery range?
6. Describe all analytical blanks that will be used? What corrective action(s) result from a "non-blank" reading?
7. How many replicates will be used in each of the experimental designs (mentioned in Technical Approach above #1 - #4).

8. Describe the calibration procedures, including frequency, used for each analytical method. An independent calibration verification immediately following instrument calibration shall be conducted. What is the expected range of the independent calibration? What corrective actions are taken if it is outside the acceptable limits? Describe the frequency of calibration solution replacement and preparation.
9. The offeror may reference a standard EPA, ASTM or other recognized method for all analytical methods used, i.e., EPA Method 1631. However, simply stating the recognized method will not be adequate. The offeror must take the referenced method and explain specifically how it relates to the samples that will be generated by the offerors proposed work.

(e) FILE 4, RESUMES OF KEY PERSONNEL, CRITICAL PERSONNEL AND/OR LETTERS OF COMMITMENT, IF APPLICABLE.

It is requested that the Resumes of Key Personnel and/or Letters of Commitment be single spaced, using 12 point font, 1" margins, and when printed will fit on size 8 1/2" by 11" paper. Proposals not submitted in the requested format, shall receive a significant weakness under the evaluation criteria of the solicitation (a 10% reduction in score will be assigned to proposals that do not conform with the required format). The page limitation set forth in L.13 for Volume II does not apply to File 2, Resumes of Key Personnel and/or Letters of Commitment.

All key personnel are those personnel that will be incorporated into Section H, Clause "Key Personnel/Program Manager (MAR 1998)". Letters of Commitment must be included for all personnel identified as Key Personnel. The key personnel will be evaluated in the areas of education, operational experience, management experience, and professional development based upon the requirements of the RFP.

Submit and clearly identify personnel resumes for all individuals to be committed to the contract as key personnel. Each resume must follow the format provided below. Each must contain the names and telephone numbers of at least three business-related references not associated with your company. Documentation shall be provided indicating all key personnel's firm commitment to accept the position(s) proposed. An indication of the percentage of time each key personnel will dedicate to the contract must be provided.

NAME:

PROPOSED POSITION (Title and Description):

EDUCATION:

List each degree received, the name of the College/University granting the degree, and the year in which the degree was received. Only degrees from accredited institutions shall be cited. Degrees from institutions that are not accredited will not be considered.

PROFESSIONAL AND/OR TECHNICAL TRAINING:

For each relevant training course cited, list the title of the training, the training institution, the date of the training, and any special certifications or licensing received for the training.

PROFESSIONAL REGISTRATION/CERTIFICATION:

For each relevant professional registration/certification, list Title, State/Society, Year, and a brief statement detailing activities/accomplishments.

JOB ASSIGNMENTS:

Starting with the present or most recent position, list (at a minimum) the last three (3) major job assignments. Supervisors and customer references may be contacted during the proposal evaluation. Experience prior to 1988 should be summarized for those individuals having more than 15 years of work experience. For each job assignment provide the following information:

Dates:

Title:

Employer Name:

Address:

Telephone Number:

Type of Business:

Supervisor Name:

HONORS, AWARDS, AND OTHER ACHIEVEMENTS:

Provide a brief statement detailing relevant accomplishments, publications, awards, honors, etc.

(f) FILE 5, MANAGEMENT APPROACH DISCUSSION.

It is requested that the Management Approach discussion not exceed five (5) pages (excluding cover page and table of contents), single spaced, using 12 point font, 1" margins, and when printed will fit on size 8 1/2" by 11" paper. DOE believes a thorough and concise discussion can be prepared within the requested page limit. Proposals that contain a file in excess of the requested page limit, shall receive a significant weakness under the evaluation criteria of the solicitation (a 10% reduction in score will be assigned to proposals that exceed the page limitation).

This section shall explain the Offeror's management approach and understanding of the requirements identified in Section J, Attachment A, Statement of Work (SOW). It should be presented in as much detail as practical and include the following:

Project Management Plan

The Offeror shall provide a Project Management Plan that shows (questions/topics listed below will not be scored individually during the evaluation, the evaluation will be done on the offerors overall information for this area):

1. The lines of communication within the organization and responsibility for requesting and assuring support between units of the proposed project structure and from other elements of the company must be shown in relation to the requirements of the statement of work.
2. The extent of subcontracting anticipated together with a list of significant items of effort to be subcontracted. Description of teaming arrangements, if any. Description of how the Offeror will monitor and evaluate the technical, managerial, and business performance of subcontractors and how the Offeror will address and correct identified performance problems.
3. If subcontracting is anticipated, demonstrated experience in successfully managing subcontracts and a detailed description of how the Contractor guarantees the data provided under the subcontract including how this information would be supported/defended in future regulatory action (if any).
4. If subcontracting is anticipated, the subcontract management procedures for source selection of subcontracts and how performance status will be determined, assessed, and projected through subcontract completion.
5. If subcontracting is anticipated, a description of the lines of communication that will exist between the subcontractor's employees and your employees.
6. The management tools and methodologies utilized, with particular emphasis on how cost, schedule, and performance status is determined, assessed, and projected throughout a project.
7. A description of the communication mechanisms within your organization which ensure your staff will work in a coordinated and cooperative fashion.
8. A description of how your organization would fill a position if a critical person were removed from the project prior to completion.

(g) FILE 6, PAST PERFORMANCE.

It is requested that the Past Performance information be single spaced, using 12 point font, 1" margins, and when printed will fit on size 8 1/2" by 11" paper. The page limitation set forth in L.13 for Volume II does not apply to File 6, Past Performance. Offerors shall submit the following information as part of their proposal for both the offeror and proposed major subcontracts:

A list of the last 5 contracts and/or subcontracts for similar services completed during the past three(3) years, and all relevant contracts and subcontracts currently in process with a total contract value greater than or equal to \$100,000 is mandatory. Contracts listed may include those entered into by the Federal Government, agencies of state and local Governments and commercial customers. Offerors that are newly formed entities without prior contracts should list contracts and subcontracts as required above for all key personnel. Include the following information for each of the 5 contracts and/or subcontracts of similar services:

- (1) Name of contracting activity
- (2) Contract number
- (3) Contract type
- (4) Total contract value
- (5) Contract work

- (6) Contracting Activity Contracting Officer and telephone number
- (7) Contracting Activity Technical Program/Project Manager and telephone number
- (8) List of major subcontractors
- (9) Period of performance

The offeror may provide information on problems encountered on the contracts and subcontracts identified above for contracts of similar services and corrective actions taken to resolve those problems. Offerors should not provide general information on their performance on the identified contracts. General performance information will be obtained from the references.

The offeror may describe any quality awards or certifications that indicate the offeror possesses a high-quality process for developing and producing the product or service required. Such awards or certifications include, for example, the Malcolm Baldrige Quality Award, other Government quality awards, and private sector awards or certifications. Identify what segment of the company (one division or the entire company) that received the award or certification. Describe when the award or certification was bestowed. If the award or certification is over three years old, present evidence that the qualifications still apply.

References other than those identified by the offeror may be contacted by the Government with the information received used in the evaluation of the offeror's past performance.

(h) **FILE 7, FACILITIES (LABORATORY) DISCUSSION**

It is requested that the Facilities discussion not exceed two (2) pages, single spaced, using 12 point font, 1" margins, and when printed will fit on size 8 1/2" by 11" paper. DOE believes a thorough and concise discussion can be prepared within the requested page limit. Proposals that contain a file in excess of the requested page limit, shall receive a significant weakness under the evaluation criteria of the solicitation (a 10% reduction in score will be assigned to proposals that exceed the page limitation).

The Offeror shall provide a description of their laboratory facilities discussing the available equipment and capabilities. Questions or topics to address at a minimum include (questions/topics listed below will not be scored individually during the evaluation, the evaluation will be done on the offerors overall information for this area):

1. Capability to provide the appropriate laboratory facilities, equipment and personnel (i.e. laboratory certification or accreditation) necessary to conduct experimentation and testing as scheduled. This effort is not intended to fund the purchase of major equipment. Therefore, the offeror is required to have all of the major equipment necessary to analyze both liquid, solid and gas samples as this solicitation will not allow for the purchase of equipment and only consumable items used in the testing will be reimbursed.
2. Demonstrated ability to store large quantities of by-products in accordance with RCRA and guarantee that upon completion of the testing that the materials will be disposed of in an appropriate manner complying with all State and Federal regulations (i.e. RCRA). Please identify any permits (state and/or federal) that the offeror currently has or will need to obtain for the proposed effort.

L.16 PROPOSAL PREPARATION INSTRUCTIONS - VOLUME III, COST PROPOSAL (AUG 2003)

- A. General. Volume III, Cost Proposal, shall consist of the offeror's fixed price proposal for the line items listed in B.1. In development of the fixed price the offeror must consider that the Service Contract Act Wage Determination for their facility location will be in effect for this requirement. A copy of the Service Contract Act Wage Determination for the offeror's location can be obtained at Internet site <http://www.wdol.gov>. The price proposal will be evaluated based on the following estimated maximum quantities for each line item:

Item 1 – Fly ash estimated maximum 250 test

\$ _____ per (triplicate) volatilization test x 250 = \$ _____ evaluated price
 \$ _____ per (triplicate) microbial test x 250 = \$ _____ evaluated price
 \$ _____ per (triplicate) leaching test x 250 = \$ _____ evaluated price
 \$ _____ per (triplicate) total analyses x 250 = \$ _____ evaluated price

Item 2 - FGD/SDA estimated maximum 100 test

\$_____ per (triplicate) volatilization test x 100 = \$_____ evaluated price
 \$_____ per (triplicate) microbial test x 100 = \$_____ evaluated price
 \$_____ per (triplicate) leaching test x 100 = \$_____ evaluated price
 \$_____ per (triplicate) total analyses x 100 = \$_____ evaluated price

Item 3 - FGD Water maximum 60 test

\$_____ per (triplicate) volatilization test x 60 = \$_____ evaluated price
 \$_____ per (triplicate) total analyses x 60 = \$_____ evaluated price

Item 4 –Limited Halide maximum 60 samples

\$_____ per (triplicate) volatilization test x 60 = \$_____ evaluated price
 \$_____ per (triplicate) leaching test x 60 = \$_____ evaluated price
 \$_____ per (triplicate) total analyses x 60 = \$_____ evaluated price

Total evaluated price will be a sum of all extended evaluated prices listed above. This amount will also be used to establish the ceiling level of the contract.

L.17 PROPOSAL PREPARATION INSTRUCTIONS - VOLUME IV, BUSINESS MANAGEMENT PROPOSAL (OCT 1994)

Volume IV, Business Management Proposal will not be utilized for this solicitation. Please include all documents for evaluation in Volume II, Technical Proposal when uploading to the IIPS program.

L.18 UNNECESSARILY ELABORATE APPLICATIONS AND FILE SIZE LIMITATIONS (JAN 2003)

Unnecessarily elaborate applications beyond those sufficient to present a complete and effective response to this solicitation are not desired. Elaborate art work, graphics and pictures may increase the document's file size. It is suggested that in preparing your application that you create files less than 5 MB. However, this file size may not be appropriate in all situations. As the nature of the application may create large files, offerors may wish to use "Zip" file compression software such as WinZip. Using this compression software will diminish the file size, thus reducing the time needed to upload and download an application.

L.19 52.237-10 IDENTIFICATION OF UNCOMPENSATED OVERTIME. (OCT 1997)

(a) *Definitions.* As used in this provision -

"Uncompensated overtime" means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

"Uncompensated overtime rate" is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at \$20 per hour would be converted to an uncompensated overtime rate of \$17.78 per hour (\$20.00 x 40 divided by 45 = \$17.78).

(b) For any proposed hours against which an uncompensated overtime rate is applied, the offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, by labor category at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

(c) The offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.

(e) The offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.

L.20 INFORMATION OF AWARD (NOV 1997)

Written notice to unsuccessful offerors and contract award information will be promptly released in accordance with DOE regulations applicable to negotiated acquisitions.

L.21 DISPOSITION OF SOLICITATION MATERIALS AND PROPOSALS (FEB 1998)

Drawings, specifications, and other documents supplied with the solicitation may be retained by the offeror (unless there is a requirement for a document to be completed and returned as a part of the offer).

Offeror's Proposals will not be returned (except for timely withdrawals).

L.22 52.233-2 SERVICE OF PROTEST. (AUG 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Mail Stop 107, Morgantown, WV 26507-0880.

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

L.23 952.233-2 SERVICE OF PROTEST.

As prescribed in 48 CFR 933.106(a), add the following to the end of the clause at FAR 52.233-2:

(a) Another copy of a protest filed with the General Accounting Office shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC-61), 1000 Independence Avenue, S.W., Washington, DC 20585, Fax: (202) 586-4546.

L.24 952.233-4 NOTICE OF PROTEST FILE AVAILABILITY. (SEP 1996)

(a) If a protest of this procurement is filed with the General Accounting Office (GAO) in accordance with 4 CFR Part 21, any actual or prospective offeror may request the Department of Energy to provide it with reasonable access to the protest file pursuant to FAR 33.104(a)(3)(ii), implementing section 1065 of Public Law 103-355. Such request must be in writing and addressed to the contracting officer for this procurement.

(b) Any offeror who submits information or documents to the Department for the purpose of competing in this procurement is hereby notified that information or documents it submits may be included in the protest file that will be available to actual or prospective offerors in accordance with the requirements of FAR 33.104(a)(3)(ii). The Department will be required to make such documents available unless they are exempt from disclosure pursuant to the Freedom of Information Act. Therefore, offerors should mark any documents as to which they would assert that an exemption applies. (See 10 CFR part 1004.)

L.25 952.233-5 AGENCY PROTEST REVIEW. (SEP 1996)

Protest to the Agency will be decided either at the level of the Head of the Contracting Activity or at the Headquarters level. The Department of Energy's agency protest procedures, set forth in 933.103, elaborate on these options and on the availability of a suspension of a procurement that is protested to the agency. The Department encourages potential protestors to discuss their concerns with the contracting officer prior to filing a protest.

SECTION M - EVALUATION FACTORS FOR AWARD

M.1 GENERAL (MAR 1998)

Proposals will be evaluated in accordance with applicable procurement laws and the criteria set forth in the solicitation.

Award will be made to that responsible offeror, whose offer, conforming to this solicitation, provides the best value to the Government, considering the Evaluation Criteria in this Section M. The Government reserves the right to award to other than the lowest priced offeror if the perceived benefits of the higher priced proposal merits the additional cost.

M.2 OVERALL RELATIVE IMPORTANCE OF EVALUATION CRITERIA (NOV 1997)

The evaluation criteria (other than cost) when combined, are considered significantly more important than cost.

The Technical Approach evaluation criterion has been assigned the highest weighting at 35%, the Experience criterion is the next most highly weighted at 25%, Quality Control/ Quality Assurance Criterion is 15%, while the Key Personnel is equal to 10%, the Management Approach, Past Performance and Facilities criteria are all equally weighted with the smallest weighting of 5% for a total of 100% for the eight criteria.

M.3 EVALUATION CRITERIA

(a) CRITERION 1: TECHNICAL APPROACH

The offeror will be evaluated under this criterion based on reasonableness of choice of methodologies, approach to and demonstrated understanding of method development, method limitations and analytical knowledge. The offeror will be evaluated on their recommended leaching, volatilization and microbial release method selected and cost of the proposed method selections. (35%)

CRITERION 2: EXPERIENCE

The offeror will be evaluated under this criterion based on the offeror demonstrating that they have worked with by-product materials previously and have demonstrated experience using the proposed methods of testing and analyses. This criteria includes leaching of the by-products and previous experience in microbiological research. The offeror will be evaluated on previous data that they collected that was used in regulatory decision making. Consideration will be given to letters provided that demonstrate commercial relationships with utilities regarding by-product testing. (25%)

CRITERION 3: QUALITY ASSURANCE/QUALITY CONTROL PLAN

The offeror will be evaluated under this criterion based on the caliber and fit of the quality assurance and quality control plan that will be submitted. The evaluation will consider if the proposed QA/QC specifically addresses each of the proposed analytical tasks and testing protocol specified in the offerors application. Consideration will be given if the offeror references a standard EPA, ASTM or other recognized method for all analytical methods used, i.e., EPA Method 1631. (15%)

CRITERION 3: KEY PERSONNEL/CRITICAL PERSONNEL

The offeror will be evaluated under this criterion based on the caliber and fit of key personnel and critical personnel to accomplish the work as described in Section J, Attachment A, Statement of Work. Previous experience working with by-product materials is a necessity. Explanation of power plant working experience and understanding of sampling locations should be included. The key personnel's and critical personnel's education, credentials, experience, management experience and professional development encompassing skills and years of experience and training related to the requirements will be considered. In addition, the offeror will be evaluated based on the percentage of time key personnel will dedicated to the contract. The offeror shall also be evaluated on their understanding of the requirement based on their assignment of positions to key and critical personnel. (10%)

CRITERION 5: MANAGEMENT APPROACH

The offeror will be evaluated under this criterion based on the approach to ensuring the requirements of the Statement of Work are met, demonstrated company management commitment to the contract, approach to and understanding of how the proposed organizational structure relates to performance of the Statement of Work, approach to recruitment and retention of personnel, approach to subcontracting, reasonableness of choice of methodologies and management tools, approach to effective communications, understanding of the value of effective communications and approach to and understanding of project management. (5%)

CRITERION 6: PAST PERFORMANCE

The offeror's past performance will be evaluated with respect to satisfaction of the customer cost and technical requirements, customer relations, production and product timeliness, corporate integrity and all other functions associated with the management and administration of contract(s).

Each offeror will be evaluated on its performance under existing and prior contracts for similar products or services. The Government will focus on information that demonstrates the quality of the Contractor's performance in contracts relative to the size and/or complexity of this requirement as identified in Section J, Attachment A, Statement of Work.

(Note: Offerors without a record of relevant past performance, or for whom information on past or present performance is not available, will be evaluated neither favorably nor unfavorably on past performance.) (5%)

CRITERION 7: LAB FACILITIES

The offeror will be evaluated under this criterion based on the quality of analytical equipment that is available at their facilities for the proposed work. The quality of the equipment will be evaluated based on make, model and limit of detection capabilities for concentrations of mercury, lead, arsenic, cadmium and selenium. The offeror will be evaluated on the storage capability of the proposed laboratory facilities to guarantee that sample storage is appropriate. The offeror will be evaluated on the disposal methods proposed in the application including any permits that they currently have or may need to obtain to dispose of the by-product material following analyses. (5%)

(b) COST PROPOSAL EVALUATION:

The cost proposal will not be point scored. It will be evaluated to establish most probable cost to the Government and shall consist of the offeror's fixed price proposal for the line items listed in B.1. The price proposal will be evaluated based on the following estimated maximum quantities for each line item:

Item 1 – Fly ash estimated maximum 250 test

\$ _____ per (triplicate) volatilization test x 250 = \$ _____ evaluated price
 \$ _____ per (triplicate) microbial test x 250 = \$ _____ evaluated price
 \$ _____ per (triplicate) leaching test x 250 = \$ _____ evaluated price
 \$ _____ per (triplicate) total analyses x 250 = \$ _____ evaluated price

Item 2 - FGD/SDA estimated maximum 100 test

\$ _____ per (triplicate) volatilization test x 100 = \$ _____ evaluated price
 \$ _____ per (triplicate) microbial test x 100 = \$ _____ evaluated price
 \$ _____ per (triplicate) leaching test x 100 = \$ _____ evaluated price
 \$ _____ per (triplicate) total analyses x 100 = \$ _____ evaluated price

Item 3 - FGD Water maximum 60 test

\$ _____ per (triplicate) volatilization test x 60 = \$ _____ evaluated price
 \$ _____ per (triplicate) total analyses x 60 = \$ _____ evaluated price

Item 4 –Limited Halide maximum 60 samples

\$ _____ per (triplicate) volatilization test x 60 = \$ _____ evaluated price
 \$ _____ per (triplicate) leaching test x 60 = \$ _____ evaluated price

\$_____ per (triplicate) total analyses x 60 = \$_____evaluated price

Total evaluated price will be a sum of all extended evaluated prices listed above. This amount will also be used to establish the ceiling level of the contract.